TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 190.

[redacted] BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, PLAINTIFF IN ERROR,

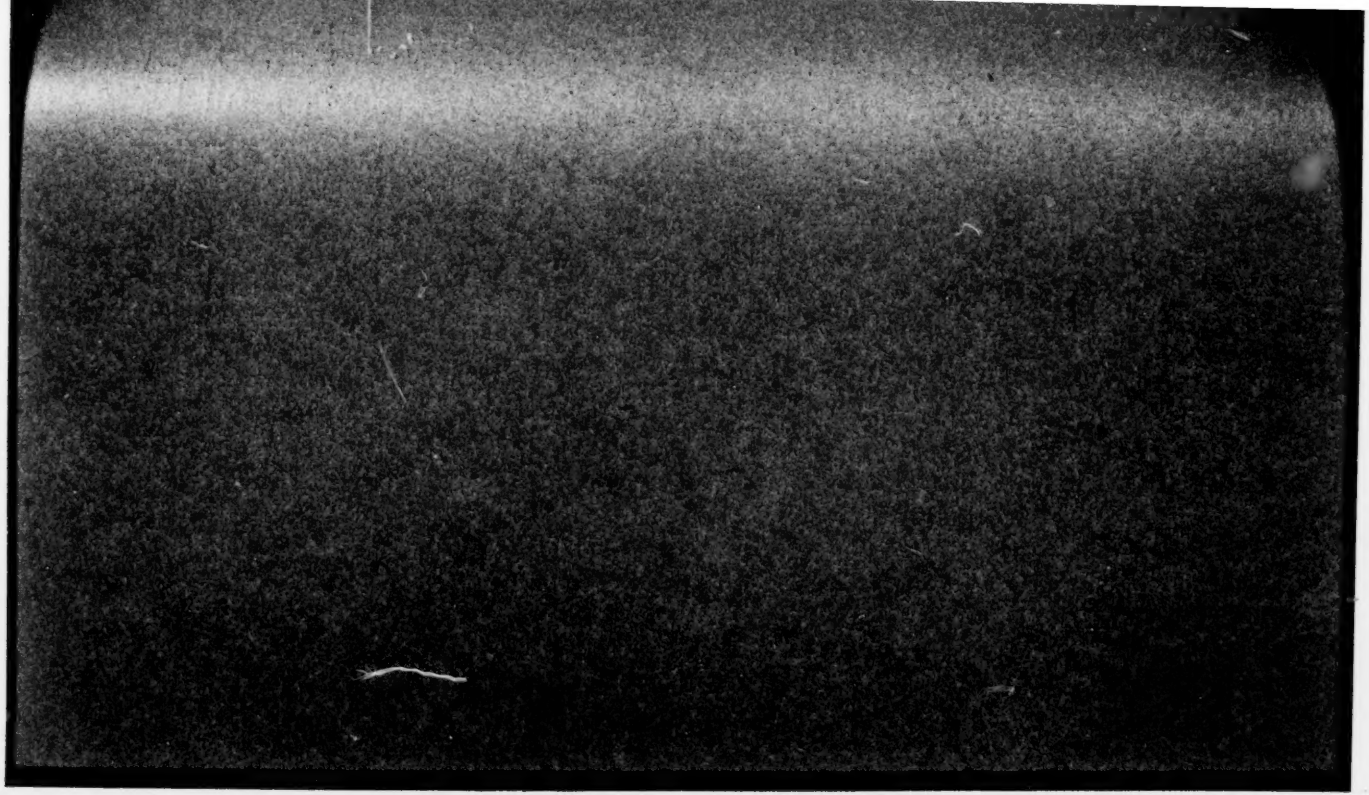
vs.

[redacted] AND MARION BONNOTTE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED [redacted], 1920.

(17,000)



(17,620.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, PLAINTIFF IN ERROR,

vs.

LAWRENCE S. WELLING AND MARION BONNOITT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

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Certified Record.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 9 May, 1899. U. R. Brooks, Clerk.

THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1899, Fourth Circuit, Darlington County.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant, and Five Other Plaintiffs, Respondent-, against said Defendant, Appellant.

Case.

For plaintiffs, respondent-: W. F. Dargan, counsel for Welling & Bonnoitt and H. M. Wilcox: Woods & Macfarlan, attorneys for H. A. Edwards and K. M. Oakes *et al.*; J. J. Ward, attorney for Welling and Bonnoitt, C. E. Ward, and A. W. Welling; Chester M. Elliott, T. H. Spain, attorneys and counsel for defendant, appellant.

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1899, Fourth Circuit, Darlington County.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant.

HENRY M. WILCOX, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant.

KITTIE M. OAKES and W. B. OAKES, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant.

2 H. A. EDWARDS, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant, Appellant.

C. E. WARD, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, Defendant, Appellant.

A. W. WELLING, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, Defendant, Appellant.

3 *Case.*

This action was commenced on January 15, 1898, for the purpose of recovering the penalty provided for in sections 1894 and 1895 of the Revised Statutes for not entering satisfaction in the proper office on a mortgage, given by said plaintiffs, respondents, to the said defendant, appellant.

This action was heard before his honor, Judge R. C. Watts, and a jury at the November term of the court for Darlington county.

THE STATE OF SOUTH CAROLINA,
Darlington County.

Court of Common Pleas.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs,
against
EASTERN BUILDING AND LOAN ASSOCIATION, Defendant.
Complaint for Relief.

The complaint of the above-named plaintiffs respectfully shows:

First. That the plaintiffs reside at Darlington Court-house, county of Darlington, in the State of South Carolina, and are citizens of the said State.

4 Second. That the defendants, The Eastern Building and Loan Association, above named, is now and was at the times hereinafter mentioned, a foreign corporation, duly chartered under the laws of the State of New York. That at some date prior to the times hereinafter mentioned the defendants entered and commenced carrying on a building and loan business in this State, and, for this purpose and in accordance with the laws of this State, appointed and kept a resident agent therein on whom legal process might be served so as to bind the defendant and give to the court issuing the same, jurisdiction.

Third. That the present resident agent of the said defendant in this State is T. H. Spain, Esq., who resides at Darlington Court-house in said State, and that the defendant has property in this State.

Fourth. That on the first day of May, A. D., 1891, the plaintiffs at Darlington Court-house, in the county of Darlington and State of South Carolina, executed and delivered to the defendant a mortgage of certain real estate situate in the town and county of Dar-

lington and State aforesaid, and particularly described in said mortgage, which was recorded in the office of register of mesne conveyance for the county of Darlington on the 10th day of June, A. D. 1891, in Book No. 15, pages 301, 302, 303, 304 and 305.

Fifth. That the aforesaid mortgage was given to secure the payment of the sum of sixty-one hundred and seventy-seven and $\frac{61}{100}$ dollars, the same being the principal, interest and premium
5 of a loan from the defendant of forty-five hundred dollars, which said loan was made pursuant to the by-laws of the said defendant's association, and was evidenced and secured by seventy-eight (78) certain promissory notes of even date with said mortgage, and payable to the said defendant association at its offices in Syracuse, in the State of New York, one on or before the last Saturday of each and every month until all of said seventy-eight notes were fully paid, together with interest on each of said notes, after maturity, at the rate of six per cent. per annum until said notes were fully paid.

Sixth. That all of said notes, and the mortgage given to secure the same have been fully paid in accordance with the terms, stipulations and conditions of the said notes, mortgage and by-laws of said defendant association.

Seventh. That the last of said notes, amounting to the sum of forty-one and $\frac{70}{100}$ dollars, falling due on or *or* before the last Saturday in October, 1897, these plaintiffs, on the 28th day of September, A. D. 1897, remitted the amount of the same to the defendant by express, carriage prepaid, at its home office in the city of Syracuse in the State of New York, and said sum, remitted as aforesaid, was received by the defendant.

Eight. That at the time of making the remittance aforesaid, to wit, on September 28th, 1897, these plaintiffs also remitted and tendered the fees of office to the defendant, and requested the defendant to enter satisfaction of the mortgage aforesaid, in accordance with the provisions of vol. I, chapter 42, article 3, sections
6 1894 and 1895, of the Revised Statutes of South Carolina of 1893; and that although the said fees of office, remitted and tendered as aforesaid, were received by the defendant, and more than three months have elapsed since said remittance and tender were made, and the same received by the defendant, and more than three months have elapsed since said request was made to enter satisfaction of the mortgage aforesaid, yet the defendant has failed and neglected to enter satisfaction of said mortgage, and has unlawfully refused and still refuses so to do, contrary to and in violation of the act aforesaid.

Ninth. That *the* reason of such failure, neglect and refusal of the defendant to satisfy the aforesaid mortgage, the defendant forfeited to, became and is indebted to these plaintiffs in the sum of eighteen hundred dollars, and that thereby this action accrued in favor of these plaintiffs against the said defendant, according to the provisions of the act aforesaid, for the said sum of eighteen hundred dollars.

Wherefore, the plaintiffs demand judgment against the defendant for the said sum of eighteen hundred dollars, with costs.

J. J. WARD,
Plaintiffs' Attorney.

(Verified.)

7 STATE OF SOUTH CAROLINA, }
Darlington County. }

Court of Common Pleas.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs,
vs.
EASTERN BUILDING AND LOAN ASSOCIATION, Defendant. } Answer.

The defendant, The Eastern Building and Loan Association, of Syracuse, N. Y., answering the plaintiffs' complaint herein:

First. Alleges that the true name of this defendant is, and always has been, the "Eastern Building and Loan Association of Syracuse, N. Y.," and not "Eastern Building and Loan Association," in which name it is sued.

Second. And this defendant further answering admits that the plaintiffs reside at Darlington Court-house, county of Darlington, in the State of South Carolina, and are citizens of the said State; that the defendant is now, and was at the times hereinafter mentioned, a foreign corporation, duly chartered under the laws of the State of New York; that in accordance with the laws of the State of South Carolina the defendant has appointed and kept a resident agent therein on whom legal process might be served so as to bind
8 the defendant, and that the present resident agent of the defendant in this State is T. H. Spain, Esq., who resides at Darlington Court-house in said State; and that said plaintiffs executed and delivered to the defendant a mortgage of certain real estate situate in the town and county of Darlington, and State first aforesaid, and particularly described in said mortgage, which was recorded in the office of the register of mesne conveyance for the county of Darlington, on the 10th of June, A. D. 1891, in Book No. 15, page 301, &c.

Third. And each and every other allegation in said complaint contained, and not hereinbefore expressly admitted this defendant denies.

Fourth. And for a further and separate answer and defense to the plaintiffs' complaint herein, the defendant alleges that it was duly incorporated on or about March 1, 1890, under chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof and supplementary thereto: that subsequently and on or about February 2, 1891, the plaintiffs duly applied in writing, to the defendant at its home office in the city of Syracuse, N. Y., for fifty shares of its instalment stock, and agreed thereby to abide by all the terms, conditions and by-laws contained or referred to in its certificate of shares, and also to comply with all the rules and regu-

lations of the defendant association; that on or about said date defendant accepted said application and issued to the plaintiffs at its home office in the city of Syracuse, N. Y., fifty shares of its instalment stock of the par or maturity value of $100.00 per share, and amounting in all to $5,000.00, represented
9 by its five several certificates of shares, Nos. 4967, 4968, 4969, 4970, and 4971, which said certificates of shares were on or about said date duly accepted by the plaintiffs. That subsequently and on or about the sixth day of April, 1891, the plaintiffs applied to the defendant at its home office in the city of Syracuse, N. Y., for an advance of the maturity value of the aforesaid shares, to wit: the sum of $5,000.00, in accordance with the rules and regulations of this defendant, said advance to be at a gross premium of ten per cent. and interest and running premium each at the rate of five per cent. per annum, payable monthly, and offered to secure the repayment of the same in accordance with the rules and regulations of the defendant by security on the premises referred to in the complaint herein; that said application so made as aforesaid, was accepted and granted to said plaintiffs by the board of directors of this defendant at its said home office; that thereupon said advance of the said maturity value of said shares, was duly made by this defendant and secured to be paid by the mortgage referred to in the complaint herein, and by the collateral assignment to this defendant by said plaintiffs of the aforesaid shares of stock; that the monthly payment mentioned and referred to in said mortgage comprised the monthly payment of dues estimated to accrue and become payable on said shares until the same should mature and reach their par value, said dues being at the rate of 75 cents per share per month, and in addition thereto, the aforesaid monthly interest and premium during said period; that under and by virtue
10 of the by-laws of this defendant, which was expressly made a part of said mortgage, and the provisions of the defendant's charter or articles of association, both of which said plaintiffs for themselves, their heirs, executors, administrators and assigns, covenanted and agreed to keep and perform, as well as said law under which defendant is incorporated, the plaintiffs agreed and became obligated to pay the dues on said shares until the same matured, and the interest and premium aforesaid on said advance until said maturity; and that said dues and interest and premium are by virtue of defendant's articles of association and by-laws, and the terms of said mortgage, all payable to this defendant at its home office in the city of Syracuse, N. Y. And this defendant further shows that no payments of dues on said shares have been made since the month of July, 1897, and that at the time of the commencement of this action, and at no time prior thereto, said shares of stock so advanced upon as aforesaid, had not attained the value of $100.00 each, and that all of said shares had not then, and have not now attained the value of more than the sum of three thousand one hundred twenty-one and $\frac{50}{100}$ dollars ($3,121.50); and that there is now justly due and owing to this defendant on account of said advance, and secured by said mortgage, after applying the value of said

shares so advanced or loaned upon by said defendant, the sum of one thousand eight hundred seventy-eight and $\frac{50}{100}$ dollars ($1,878.50) with interest, premium and fines on said advance from August 1, 1897, which sum the plaintiffs have never tendered or offered to pay to the defendant. And this defendant further shows that under the law under which it is incorporated, its charter or articles of association and by-laws, it is a mutual
11 institution in which all of the members thereof must, according to their respective holdings, share equally in the profits and losses, and that the defendant has no means of maturing its shares except by the contributions of its members thereon and the earnings to which the same are entitled; and that the rights of plaintiffs are not superior to that of any other member in the amount that they are entitled to receive under said shares, and that having been loaned or advanced the full maturity value of said shares they are bound by virtue of their agreements with this defendant to pay to it in cash, the difference between the value of said shares and the amount of said advance together with any arrearages of interest and premium, if any, or to continue the payment of the monthly dues on said shares and the interest and premium on said advance until said shares have matured, before they are entitled to a satisfaction and discharge of their said mortgage, and that the plaintiffs have not performed either of said obligations.

Wherefore, the defendant demands judgment, dismissing the plaintiffs' complaint with costs.

T. H. SPAIN,
Defendant's Attorney.

(Verified.)

Defendant interposed an oral demurrer to the complaint (which was reduced to writing in accordance with the rule of the court) on the following grounds:

"That the complaint does not state facts sufficient to constitute a cause of action in this; that the complaint does not
12 allege the law of the State of New York, governing the mortgage contract, and which is a part and parcel of the mortgage contract."

The COURT: There are sufficient allegations in the complaint, if true, and the demurrer admits them to be true, to show that the notes were paid in accordance with the by-laws of the company.

Defendant excepts.

Plaintiffs' Testimony.

Introduces articles of incorporation of 1890. Marked Exhibit A.
Introduces copy of by-laws of defendant company of 1890. Marked Exhibit B.

L. S. WELLING, plaintiff, testified.

Direct examination by Mr. W. S. DARGAN:

Q. I hand you a paper purporting to be a mortgage; do you recognize that paper?
Ans. Yes, sir.
Q. Is that the paper set out in your complaint in this case?
Ans. Yes, sir.
Q. Given to whom?
Ans. Given to the Eastern Building and Loan Association.

Plaintiff introduces mortgage. Marked Exhibit C.

Q. What was that mortgage given to secure?
Ans. Forty-five hundred dollars I borrowed from them.
13 Q. How evidenced?
Ans. By seventy-eight notes.
Q. Have you got those notes?
Ans. I have.
Q. Where are they?
Ans. They are in my letter book.
Q. Are these the notes?
Ans. They are seventy-five of them.
Q. What is the amount of those notes?
Ans. Seventy-nine dollars and twenty cents each.
Q. Have you paid those notes?
Ans. Yes, sir.

Plaintiff here introduces seventy-five notes for $79.20 each, made to the Eastern Building and Loan Association and signed Lawrence S. Welling and Marion Bonnoitt, and numbered 8113 and 8187 both inclusive, and marked Exhibit C 1.

Q. When did you pay them?
Ans. I paid them on or before the last Saturday in each month.
Q. From what time?
Ans. I don't remember what time it was, I think it was in 1891, along about January I think it was.
Q. Who is the joint maker on those notes with you?
Ans. My partner, Mr. Bonnoitt.
Q. What was the business of Bonnoitt and yourself?
Ans. Hardware merchants.
Q. For what purpose was that money borrowed?
Ans. Borrowed to build our store over there.
14 Q. For what amount did you give the notes?
Ans. I think it was some sixty-one or sixty-two hundred dollars.

Q. It is stated in the complaint $6,177.60?
Ans. Somewhere in that neighborhood.
Q. You say there are only seventy-five of the notes?
Ans. Only seventy-five of them. There were seventy-eight given but I only have seventy-five here.
Q. Where are the other three?
Ans. They are held by the association in Syracuse.
Q. Why are not those in your possession?
Ans. We made them a tender of payment. We sent them the money and they held the three notes. The face value of the three notes was $41.70. Those notes they would not return to us because we didn't send them $79.20.
Q. Why didn't you send them $79.20?
Ans. Because we didn't owe it. We only signed the notes for $41.70.
Q. What did those notes call for?
Ans. $41.70.

Defendant admits the tender of payment of the last three notes at the office required and also admit- the request made by plaintiff to mark the mortgage satisfied.

Plaintiff introduces the three notes referred to above given by Lawrence S. Welling and Marion Bonnoitt to the Eastern Building and Loan Association, numbered 8188, 8189, 8190, respectively, the face value of each $41.70. Marked Exhibit C 2.

15 Q. Mr. Bonnoitt is your copartner in this matter?
Ans. Yes, sir.

Q. I hand the witness this pamphlet, entitled "The definite contract plan of the Building and Loan Association of Syracuse, New York" as a part of their literature, issued at the time of this loan which was identified as a part of their literature in the taking of the testimony *de bene esse* and I ask this plaintiff if he ever saw this pamphlet?

Defendant objects on the ground that the mortgage speaks for itself and the only issue here is the payment of the mortgage.

Mr. DARGAN: The purpose we have in offering this pamphlet, may it please your honor, is not that it shall be in derogation of the contract or to change its terms, but to show that this literature is made a part of the by-laws of the association which we have introduced.

By the COURT: You made the contract in accordance with the by-laws; if you can show anything in the by-laws sustaining your position I will allow it, otherwise I rule it out. In other words the mortgage speaks for itself and must be construed with what is in it. If there is any by-laws that allows that literature to be issued or anything of that sort it must come in, otherwise the by-laws speak for themselves.

Mr. DARGAN: Under these by-laws the board of directors are authorized to make such laws as they deem necessary and to make such contracts as they deem necessary for the conduct of the busi-

ness of the association. Under that they assume to issue a
16 certificate, on that certificate are fifteen conditions. The conditions in the by-laws, the terms and conditions upon which that certificate is issued, and the by-laws and articles of agreement constitute the contract. One of the terms of the conditions on the certificate which is incorporated in their by-laws and authority for it is this: "15. No agent has the authority to change this contract in any way and the association assumes no obligations for any statement not contained in its printed literature."

The COURT: I will allow it under that article. I think after an inspection of the paper it is admissible because it purports to be from the secretary of the association under the directions of its directors.

Defendant excepts.

Pamphlet entitled "The definite contract plan Eastern Building and Loan Association of Syracuse, N. Y.," is introduced by plaintiff and marked Exhibit D.

Q. Mr. Welling, have you ever seen that pamphlet, or one like it before—"The definite contract plan"?

Ans. Yes, sir.

Q. When did you first see it?

Ans. When the agent, Mr. Carpenter, came along here, I think it was in January, 1891.

Q. Was the stock explained to you?

Objected to on the ground that it is irrelevant and immaterial, and that what the agent said to him is not competent.

Objection sustained. Exception noted.

17 Q. Were you induced by that means to take it?

Objected to. Objection sustained. Plaintiff excepts.

Q. After showing you that, you did take it?

Objected to as immaterial whether he did or did not.

By the COURT: He can state that he saw that before he took it, but he cannot say he was induced by that to take the stock.

Q. I hand the witness another pamphlet entitled "Endowment outdone."

Defendant objects to plaintiff's attorney stating title of pamphlet before it is admitted in evidence.

Cross-examination by Mr. ELLIOTT:

Q. Before you obtained this loan from the association you signed other papers, did you not, than those which have been mentioned to you?

Ans. I don't remember.

Q. Didn't you sign an application for stock that was in writing?

Ans. Yes, sir.

Q. Did anybody join you in that application?

Ans. My partner.

Q. Mr. Bonnoit?

Ans. Yes, sir.

Q. You two made that?

Ans. Yes, Welling & Bonnoitt.

Q. You sent that in to the association at Syracuse, New York?

Ans. I gave it to their agent here.

18 Q. About how long before you made application for a loan did you send that application for stock in?

Ans. I think about two or three months.

Q. If you recollect, didn't you make your application for stock on or about the 2nd day of February, 1890?

Ans. I think it was in February.

Q. Wasn't that followed up by you- application for a loan subsequently, in April?

Ans. I think so.

Q. Do you know whether that application for stock contained what is called a proxy or not, giving the power to some one in Syracuse to vote on your stock?

Ans. I don't know whether it did or not.

Q. I show you this paper and ask you if that is the application for shares which you signed?

Ans. Yes.

Defendant introduces application for shares signed by Welling & Bonnoitt, dated 28th January, 1891, witnessed by one Samuel Carpenter. Marked Exhibit E.

Q. After you executed that paper did you receive this certificate of stock from defendant? (Hands paper to witness.)

Ans. Yes, sir.

Defendant introduces certificate of shares of stock which bears date February 2, 1891, for ten shares of one hundred dollars each, marked Exhibit F.

Q. About what time did you receive this certificate?

Ans. I couldn't tell but I received it in a short time after I made application.

Q. In a short time after the date of this application?

Ans. Yes, I think so, it was not more than two or three days.

19 Q. You held this certificate until about the time you obtained the loan from the defendant association?

Ans. Yes, sir.

Q. Did you and Mr. Bonnoitt, your partner, execute a paper which I show you, being an application for a loan?

Ans. Yes, sir.

Defendant introduces application for loan, bearing date April 6th, 1891, and marked Exhibit G.

Q. This was sent to the association at Syracuse, New York?

Ans. Yes, sir.

Q. And in it you apply for a loan of five thousand dollars?

Ans. Yes, sir.

Q. You got five certificates of stock?
Ans. Yes, sir.
Q. Each for one thousand dollars?
Ans. Yes, sir.
Q. I suppose they were numbered as they appear on these certificates, from 4967, 4968, 4969, 4970, and 4971?
Ans. Yes, sir.
Q. When you received these certificates of stock, or any one of them, you noticed that upon the back was printed the by-laws of the association?
Ans. Yes, sir.
Q. You paid how many of those notes?
Ans. Seventy-five.
Q. And three of them are with the association at Syracuse?
Ans. Yes, sir.
Q. They advised you when you sought to pay those notes
20 that they did not pay up what they claimed to be, the amount of the balance of your indebtedness to the association?
Ans. That is what they claimed.
Q. And they informed you that your share of stock upon which you had obtained a loan had not reached maturity, or par value?
Ans. Yes.

Redirect examination:

Q. You say that you have paid seventy-five of the notes?
Ans. Yes, sir.
Q. And three of the notes are in the hands of the Eastern Building and Loan Association?
Ans. Yes.
Q. Have you paid those?
Ans. I tendered payment. I sent them the money.
Q. Have they got the money?
Ans. I don't know. I have got their receipt.
Q. You sent them the amount of the notes?
Ans. Yes.
Q. And directed the payment of them?
Ans. Yes; directed the payment of them.
Q. When you signed those notes and that mortgage did you sign that on the back of those certificates?

(Hands paper to witness.)

Ans. Yes, sir.
Q. What did you do with them then?
Ans. I gave them to their lawyer here to be sent back to the company.
Q. When you signed the notes you gave up the certificates of shares?
Ans. Yes; I withdrew my shares altogether.
21 Q. After signing that?
Ans. Yes.

Q. Is that what you did on each one of these shares?
Ans. Yes, sir.

Examination by Mr. J. J. WARD:

Q. What time did you pay the money for those notes; and where did you pay it?
Ans. They had several agents here. I was their first agent.

Objected to on the ground that it is irrelevant and immaterial, as the contract shows where the money should be paid. If they should seek to show by proof some different place of payment than that specified in the contract it is improper evidence.

The COURT: The complaint says they were to be paid at the home office at Syracuse, New York.

It is admitted by the defendant that the mortgage is not satisfied of record although the defendant was requested by the plaintiff to do so as alleged, the defendant assigning as a reason for its refusal to do so that the mortgage had not been paid according to its terms and conditions.

Q. It is stated in your mortgage that the consideration of it was five thousand dollars? Is that right?
Ans. Yes.
Q. It was given on your property here in town?
Ans. Yes.
Q. I see this clause in your mortgage: "This grant is intended as a security for the payment of the sum of sixty-one hundred
22 and seventy-seven and $\frac{00}{100}$ dollars, the same being the principal interest and premium of a loan from said association."
Ans. Yes.
Q. "Which said loan was made pursuant to and accepted under the provisions of the by-laws of said association, and which said by-laws have been read by the mortgagors and are hereby made a part of this contract; which said loan is evidenced and secured to be paid by seventy-eight certain promissory notes of even date herewith, executed by the said Lawrence S. Welling and Marion Bounoitt, payable to the said association at its office in Syracuse as follows: One of each of said notes is to be paid on or before the last Saturday of each and every month until all of seventy-eight notes are fully paid, together with interest on each of said notes after maturity at the rate of six per cent. per annum, payable semi-annually until said notes are fully paid?"
Ans. That is right.
Q. Were all the covenants and agreements agreed to be performed by you in that mortgage performed by you?
Ans. Yes.
Q. The actual amount received by you from the association was how much?
Ans. Forty-five hundred dollars.

Recross-examination by Mr. ELLIOTT:

Q. I understood you to say last night, Mr. Welling, that you were at one time an agent or representative of the defendant here?

Ans. I was agent of the company.

Q. Of the Eastern Building and Loan Association?

Ans. Yes, sir.

23 Q. When did you become such agent?

Ans. When they first started business here—I think about February, 1891.

Q. How long did you continue such agent?

Ans. I don't remember, I suppose about a year.

Q. So you were the agent of the association when you and your partner took out this stock?

Ans. Yes, sir.

Q. You were the agent of the defendant association and its representative here when you applied to it for this loan?

Ans. I don't know whether it was then, or that I applied through Mr. Carpenter when he was here.

Q. It is a fact that you were the agent of the association on the 6th April, '91, when you applied for this loan of five thousand dollars?

Ans. Yes.

Q. Who appointed you as agent?

Ans. I think I was recommended by Mr. Carpenter and appointed by the association.

Q. Did you receive a certificate of authority or a paper bearing the signature and seal of the association which showed your authority to act as their agent?

Ans. I am not sure but I think I did.

Q. Did they furnish you with any blanks?

Ans. Yes.

Q. And among those were there blank applications for stock?

Ans. Yes, sir.

Q. And blank applications for loans?

Ans. Yes.

24 Q. Any other papers?

Ans. This literature they had.

Q. What do you mean by "this literature"?

Ans. That little book they had in evidence last night.

Q. This little prospectus that was admitted in evidence?

Ans. Yes.

Q. Anything else?

Ans. A whole lot of cards and things like that—a good deal of literature.

Q. That they furnished to you?

Ans. Yes.

Q. As their agent?

Ans. Yes.

Q. I suppose, Mr. Welling, you read it yourself as their agent, to qualify yourself to transact business for them?

Ans. Yes, sir.
Q. You read over their act of incorporation?
Ans. No, sir.
Q. You read their by-laws?
Ans. No, sir. I never read over them.
Q. Never read over them as their agent?
Ans. No, sir.
Q. Did you start to sell their stock?
Ans. I solicited stock for them. Mr. Carpenter sold the most.
Q. You continued their agent for a year or more?
Ans. Yes, sir, about a year.
Q. When you applied for stock, as I understand you, you were their agent?
Ans. No, sir.
25 Q. When you applied to purchase this stock?
Ans. No, sir.
Q. You were their agent the latter part of January or February, 1891?
Ans. Yes.
Q. How soon after you applied for and received stock for five thousand dollars from the association did you become their agent?
Ans. I don't know exactly.
Q. Give us your best recollection.
Ans. I suppose something within a month; about a month probably.
Q. Did you receive any circulars or literature or advertising matter from anybody before you became agent?
Ans. Yes, sir.
Q. From whom?
Ans. Mr. Carpenter.
Q. What did you receive?
Ans. That little book they had in evidence last night.
Q. At the time you took your loan you were their agent?
Ans. Yes, sir.
Q. You were handling their literature?
Ans. Yes, sir.
Q. You have just testified that you complied with all the conditions of this mortgage—which calls for a compliance with the by-laws of the association, and which states that you shall pay all fines and penalties and other charges that may be made against you by the association—now the only thing you have done, or you claim to have done to make that a full compliance is to pay the seventy-eight notes; that is to pay seventy-five notes and offer to pay the other three?
Ans. Yes.
26 Q. That is what you mean by a full compliance with the terms and conditions of the mortgage?
Ans. Yes, sir.
Q. That you have paid seventy-five notes and offered to pay the three others which the association would not take?
Ans. Yes.

Q. That is what you mean by a full compliance with the terms and conditions of the mortgage?

Ans. Yes, sir, and keeping up the property and taking the insurance they required.

Q. You kept it insured?

Ans. Yes, sir.

Q. You have complied with the terms of the mortgage by paying seventy-five notes and offering to pay the other three notes, and then that is what you mean by a full compliance?

Ans. Yes.

Q. And that is everything you have done?

Ans. Yes, sir.

Q. You are perfectly clear on that point?

Ans. Yes, sir.

The COURT: Have you paid any fines and forfeitures?

Ans. Yes, sir. I paid one fine.

Redirect examination:

Q. So they have been paid on this loan?

Ans. Yes, on this loan and other loans too.

Q. One fine accrued against you?

Ans. Yes, sir.

Q. And you paid it?

Ans. Yes, sir.

27 Q. Did you give a bond as agent of this association?

Ans. Yes.

Q. Whom did you give the bond to?

Ans. To the company.

Q. They sent you a lot of literature—applications for stock and loans, &c.; for what purpose was that literature sent to you?

Ans. For soliciting stock.

Q. To induce people to take stock?

Ans. Yes, sir.

Q. It was a part of your duty as agent to circulate this literature?

Ans. Yes.

Q. To unfold the plans of the association?

Ans. Yes, sir.

Q. This little pamphlet that was put in evidence was among the literature you circulated?

Ans. Yes.

Q. Mr. Elliott asked you if you thought that by paying the notes and keeping up the insurance, and I will add taxes, on the property generally that you complied with that contract, did you understand that there was anything else for you to do?

Defendant objects to witness stating what he may have understood as the mortgage speaks for itself. Objection sustained. Exception noted.

Q. Was that the contract you made?

Objected to.

Q. As their agent what did you do besides distributing this circular?

Defendant objects to witness giving a history of his agency, as irrelevant and immaterial. Objection sustained. Exception noted.

28 Q. What were your duties as agent?

Objected to.

Q. What were your duties as legal agent outside of being the receiver of the blanks and literature and distributing them?

Objected to as irrelevant.

Mr. DARGAN (addressing the court): I wish to show if he was authorized to receive money here, and did receive money here on these notes.

Objected to. Objection sustained. Exception noted.

Q. Did or not Welling & Bonnoitt pay these notes to a legal agent in Darlington?

Objected to.

The COURT: In any view of the case before you could show that Mr. Welling collected money as agent you would have to show that he was authorized by the company for that purpose. I will allow the witness to state whether he was authorized by the company to receive the money, but I tell you now, even if he was, this contract is to be construed by the New York law.

Mr. ELLIOTT: May it please your honor, their complaint declares that the money was sent to the home office at Syracuse, New York.

Q. To whom did you pay those seventy-five notes?

Objected to on the ground that it is immaterial and irrelevant. Objection overruled. Exception noted.

Q. To whom did you pay these notes of Welling & Bonnoitt?

Ans. Paid some to L. S. Welling, as their agent, some to J. D. Baird, and Geo. H. Edwards was another. That is all I can remember now.

Q. Did you pay any to Howard A. Edwards?

Ans. Yes.

29 Q. In other words these seventy-five notes were paid here to some agent?

Ans. Yes.

Mr. ELLIOTT (to the court): I move to strike out the testimony as inadmissible, irrelevant and immaterial.

The COURT: When the payment is made, even if the contract is to be construed by the laws of New York, they have a right to show that it was paid to an agent here. Suppose these papers were sent to an attorney here by the company, for collection, the lawyer here would have the right to collect them.

(Mr. DARGAN:)

Q. Where did these agents live?

Objected to. Objection overruled. Exception noted.

Ans. They lived here and were located here.

Recross-examination by Mr. ELLIOTT:

Q. You have stated that you paid some fines on this contract?

Ans. Yes, I think I paid one fine—no, sir, I paid fines on two others we were paying.

Q. You state that you paid fines on this and fines on another, is that right?

Ans. It strikes me I paid one fine. I have been paying up three loans. I am not certain which one it was.

Q. Your impression is you paid a fine on this?

Ans. I can't be certain.

Q. It is your impression?

Ans. I rather think I may have paid one fine.

30 Q. That is your impression, that you paid one fine on this contract? Do you recollect how much it was?

Ans. If I paid it on this it was twenty cents a share.

Q. How many shares?

Ans. If it was this loan, it was fifty shares.

Q. That is ten dollars in fines you paid?

Ans. That is if this is the loan, I paid ten dollars.

Q. When was that paid?

Ans. I don't know.

Q. About when do you think?

Ans. I haven't any idea.

Q. Since the loan was made?

Ans. Yes.

Q. Give us your best judgment?

Ans. I couldn't do it without going back to my book.

Q. Give us your best judgment, whether it was a year or two years or only six months.

Ans. I couldn't say with any accuracy at all whether it was one year, two years, three or four years.

Q. You recollect you paid ten dollars in fines?

Ans. Yes, I know I paid ten dollars in fines, either on this loan or on two others I was paying on. I don't say it was on this loan.

Q. The others were practically the same?

Ans. Yes, the securities were the same.

Q. Notes and mortgages?

Ans. Yes.

Q. The notes and mortgages, to all intents and purposes like this?

Ans. Yes, sir.

31 Q. Whom did you get word from that you owed fines—the agent or the company?

Ans. The company gave me notice.

Q. Sent you written notice?
Ans. Yes, sir.
Q. And said there were certain fines and gave you the amount?
Ans. Yes, sir.
Q. Whom did you pay them to?
Ans. Paid them to their agent here,—Mr. Edwards.
Q. Do you recollect that?
Ans. Yes, I recollect that distinctly.
Q. That you paid them to whom?
Ans. Mr. Edwards.
Q. Did you pay him the ten dollars fine, when you paid him other moneys or paid him that separately from other moneys?
Ans. No, sir. I paid him when I paid him the next monthly payment I paid him that.
Q. No question in your mind but what you owed the ten dollars?
Ans. No, sir.
Q. You paid it?
Ans. I paid the ten dollars.
Q. That is the only fine you ever paid?
Ans. Yes, sir.
Q. Aside from the ten dollars in fines, the keeping up of the insurance on the property described in this mortgage and the payment of the seventy-five notes, and the offer to pay the three other notes, that is all that that means by a full compliance with the terms of your contract?
Ans. Yes, sir.

32 Q. You have never complied with the terms of your contract in any other way than by the payment of the ten dollars in fines, keeping up the insurance and the payment of the seventy-five notes in evidence here and the offer to pay the other three?
Ans. No, sir.
Q. You mean that?
Ans. Yes, sir.

Redirect examination:

Q. Have there ever been any other demands on you except the payment of that money?
Ans. They made a demand when I sent them $41.70; they made a demand on me for more.
Q. That was the first demand?
Ans. Yes.
Q. They hadn't complained up to that time?
Ans. No, sir.
Q. The last three notes were $41.70 each?
Ans. Yes, sir.
Q. They wanted you to send on what when you sent that on?
Ans. I think the difference between $41.70 and $79.20.
Q. They wanted you to pay them $79.20 for a note of $41.70?
Ans. Yes, sir.

Q. You declined?
Ans. Yes.
Q. Did you ever know that they were going to insist on that until they did?

Objected to.

Q. Did you ever receive any information from them to that effect up to that time?
Ans. No, sir.
Q. You are not clear that you paid any fines on this particular loan?
Ans. No, sir; I am not positive about this loan.

33 Recross-examination:

Q. The company also wrote to you when you made this tender that your stock had not matured, didn't they?
Ans. Yes, sir.
Q. And that your loan could not be paid off until the shares of stock which were pledged to secure this mortgage should reach par value?
Ans. That is what they wrote me.
Q. They told you how much was unpaid?
Ans. No, sir; I don't remember that.
Q. They told you they couldn't accept your payment in the full discharge of your mortgage?
Ans. They did.
Q. After you received that information you made no attempt to mature those shares?
Ans. No, sir.
Q. None whatever?
Ans. No, sir.
Q. And afterwards brought this suit?
Ans. Yes, sir.

Redirect examination:

Q. Did they tell you how long you had to pay to mature them?
Ans. I think they told me I had to pay about twenty-two months longer.
Q. You declined?
Ans. I did.

Recross-examination:

Q. Did you get a letter from them to that effect?
Ans. Yes; I think I have got it.
Q. Did you give it to your counsel?
Ans. Yes.
34 Q. Did they give you any time when they thought they would mature?
Ans. Yes; I think I received a letter that I would have to pay

twenty-two months; or maybe Mr. Edmunds told me that. I am not certain about that.

Defendant's counsel here made the request that the plaintiff's counsel produce the correspondence between the association and this plaintiff with reference to the three notes that were offered to the company at Syracuse, and their reason for not accepting them and the information given by the association to the plaintiff.

The COURT (addressing defendant's counsel): If you have that letter, Mr. Dargan, you will have to deliver it, since you have examined the witness as to what that letter contains.

A letter is handed to defendant's counsel by plaintiff's counsel.

(Mr. ELLIOTT:)

Q. Did you receive this letter through the company? (Hands letter to witness.)

Ans. Yes, sir.

Q. You received that after you sent to Syracuse and offered to make payment of the last three notes?

Ans. This letter was in answer to one of the three payments of $41.70. They had my note for $41.70 and I sent that amount to them.

Redirect examination:

Q. Did you receive this letter from them? (Hands letter to witness.)

Ans. That letter was sent here while I was away. I saw it on my return here. It is from them.

35 Plaintiff's counsel introduces the following letters from defendant association to plaintiff: Letters dated Aug. 23, '97, Exhibit H; Aug. 28, '97, Exhibit I; Nov. 24, 1897, Exhibit R; Sept. 8, 1897, Exhibit K; Sept. 22, 1897, Exhibit M, and Sept. 25, marked Exhibit O.

Counsel for plaintiffs asks for the production of a letter dated Sept. 15, 1897, written by the defendant association to the plaintiff.

It is agreed that in order to save time that under notice to produce replies to the correspondence introduced that press copies of the letters be introduced—being the letters in reply to the letters from the defendant association. See Exhibits H, J, L, N, P, Q.

Recross-examination:

Q. After receiving these letters from the association that are in evidence now, did you ever pay, or offer to pay anything further to the association on account of your mortgage?

Ans. No, sir.

Plaintiff's counsel introduces the shares of stock of L. S. Welling and Marion Bonnoitt in the Eastern Building and Loan Association (marked Exhibit F) and calls attention to the endorsement on the back of each certificate.

36 EXHIBIT A.

Articles of Incorporation.

Whereas, articles of incorporation of the Eastern Building & Loan Association of Syracuse, N. Y., were heretofore filed with the clerk of the county of Onondaga in the State of New York, under and in pursuance of an act of the legislature of the State of New York, entitled "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the Laws of 1851, and the acts amendatory thereof, and

Whereas, certain informalities and omissions exist in the original certificate of incorporation,

Now, therefore, we, the directors of said corporation under and in pursuance of an act of the legislature of the State of New York, passed April 5th, 1870, entitled "An act for the relief of corporations organized under general laws," do hereby make and file the following amended certificate of incorporation, viz:

Articles of Incorporation.

We, the undersigned, hereby associate ourselves together and agree to become incorporated under the provisions of the act entitled "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the Laws of 1851, and the acts amendatory thereof and supplemental thereto, under the name of the Eastern Building & Loan Association
37 of Syracuse, N. Y., for the purpose of engaging in and carrying on business as hereinafter mentioned.

I.

The name of this corporation shall be the Eastern Building & Loan Association of Syracuse, N. Y.

II.

This association is formed for the purpose of purchasing real estate; for the erection of buildings or other improvement, and the improvement of lands; for aiding members in acquiring or improving real estate, or of removing incumbrances thereon by means of advances; for accumulating a fund for the benefit of members who do not obtain advances; and for the purpose of conducting the general business of a building & loan association and providing the advantages usually expected from savings banks and other institutions of like character.

III.

The principal place of business of this association shall be located at Syracuse, N. Y. But branches or agencies may be established and business done in any part of the State of New York or in any State or Territory of the United States as the board of directors may direct.

IV.

The time of the regular meeting of this corporation shall be the second Monday in May of each and every year, and special meetings may be called at any time upon the written call of a majority of the directors of this association, or of ten or more shareholders therein.

38 A quorum shall consist of not less than a representation of at least five hundred (500) shares of stock of said association; and not less than one-half the number of said directors in cases where a directors' meeting shall be found necessary.

V.

The qualification of members shall be as follows: Any person upwards of twenty-one years of age, or parents or guardians of children, may become members of this association and shall become such upon subscribing for two or more shares of stock in this association as prescribed by the by-laws thereof.

VI.

The management of all the business of the association shall be vested in a board of nine directors who shall be chosen at each regular meeting. Said board shall have full power and authority to fill all vacancies, and make such by-laws, rules and regulations for the general management and conduct of the business of this association as they may deem necessary.

The officers of this association shall consist of a president, vice-president, secretary and general manager (combined), and treasurer, who shall be chosen by and from the board of directors at their first regular meeting after the annual meeting of the association; also an attorney who shall at the same time be chosen by the board of directors from their number or from one of the stockholders. Said officers to receive the vote of a majority of said board present

39 at any meeting. And said board of directors shall in the same manner, also designate a trustee who shall be chosen at its first regular meeting.

Any of the officers, the trustee and attorney of this association, may be removed or suspended from office by a majority of the board of directors and a majority of the number of shares of stock of said association.

VII.

The duties of the said several officials shall be as follows: The directors shall pass upon the sufficiency of all property offered as security for loans and attend generally to the financial affairs of the association as provided by the by-laws to be hereafter adopted.

It shall be the duty of the president to preside at all meetings of the shareholders and of the board of directors; to sign certificates of stock and sign all releases of mortgages, and he shall perform all other duties pertaining to said office as provided by the by-laws to be hereafter adopted.

The vice-president shall perform all the duties of the president in his absence.

It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all moneys paid into the association and pay the same over to the treasurer and take his receipt therefor; he shall keep all accounts of the association; conduct all correspondence; sign all orders on the treasurer and sign all certificates of stock under
40 the direction of the board of directors; whenever required by the board he shall submit a statement of the financial affairs of the association. The books of the association shall be kept by him and at all times be subject to the inspection of the board. He shall receive from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association and make proper entry of the same in books kept for that purpose. He shall attend to all printing and publication and have general supervision over all agents or agencies of this association, and any further duties as may be prescribed by the by-laws to be adopted.

It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board of directors. He shall keep correct account of all moneys received and paid out by him. He shall make to the board of directors when required a statement in writing of the full business of his office.

It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans and certify in writing to the board of directors all facts that might affect the interests of the association in case such security may be accepted. He shall prepare all papers incident to making loans and secure loans by the association and cause them to be properly executed and such other duties as may be required by the by-laws of this association.

VIII.

All officers holding responsible positions shall execute to
41 the association such bonds for the faithful performance of their duties as the board of directors may require.

IX.

The entrance fee of new members and new shares shall be one dollar ($1.00) per share of stock in said association. The monthly dues per share shall be seventy-five cents ($.75).

There shall be a transfer fee of two dollars ($2.00) on each and every certificate of shares transferred.

The fines for non-payment of dues shall be ten cents ($.10) on each and every share of stock unpledged, and twenty cents ($.20) on all stock pledged for each and every month the payment may be in arrears.

In case a monthly payment on any share shall become past due and payable for a period of six months or more, such share shall be

sold for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines and the balance remaining after paying all accrued fines and monthly payments shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments, it shall be bid in by the association and cancelled and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

X.

The advances or loans made to any member of this association shall not exceed the face value of the stock owned by him,
42 and except as hereinafter stated shall be upon satisfactory first-mortgage real-estate security and be under such rules and regulations as the by-laws and the board of directors may require.

Loans may be made upon shares in good standing and in force one year to an amount not exceeding 90 per cent. of the monthly dues paid to the association upon such shares as collateral security, and upon such note, bond or other obligation or instrument as the board of directors and by-laws may require.

A uniform premium of 10 per cent. shall be paid and allowed by the borrower upon each loan; and upon all loans, the borrower shall pay interest at the rate of 5 per cent. per annum and a premium of 5 per cent. per annum as a redemption fee and the same shall be paid on the last Saturday of each month during the continuance of said loan at the principle office of the association. In case the monthly installments on loans are not paid as aforesaid, then interest at the rate of 6 per cent. per annum, payable semi-annually, shall be collectable thereon; and in case default shall be made in the payment of the regular monthly instalments, fees or dues, the association may compel payment of principal, interest and premium, assessments, fees or dues, by proceeding upon the note or other obligation and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the association.

Pledged shares may be transferred upon consent of the
43 association by transferring the mortgage security upon payment of the fee therefor provided all assessments, instalments, dues and charges thereon are paid to date and subject to such other regulations, if any, as the by-laws may provide.

Any shareholder may have his mortgage transferred or changed from one piece of property to another, by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

Loans may be prepaid and the mortgaged property released upon application to the association and giving thirty days' notice in writing of the intention. An equitable discount shall be allowed therefor to be determined by the board of directors.

XI.

Unpledged shares may be transferred upon consent of the association, upon payment of the fee therefor, provided all dues and claims thereon have been paid to date.

XII.

Shares which are not pledged may be withdrawn before maturity provided the same are in good standing and all dues and fines have been paid to date. The association shall have the right to require at least thirty days' prior notice of intention to withdraw. Upon such withdrawal the holder will be entitled to receive thereon the amount of the monthly instalments that have been paid with such additional interest, if any, as the by-laws may provide, except that the same shall not exceed the net earnings of said stock. But in no event shall the association be required to pay to withdrawing members more than one-half of the net receipts of the monthly instalments paid in during the month in which the withdrawals occur. In no case shall a withdrawal from the loan fund exceed the amount of the instalments paid thereto, together with the estimated amount of the earnings upon the same.

XIII.

The association shall have the right to mature any shares of one year's standing and to issue in the place thereof paid-up certificates of shares payable at maturity with interest at the rate of 6 per cent. per annum or at maturity of stock in pledge payable at maturity of loan.

It shall also have the right to cancel any unpledged certificate of shares after it has been in force three years upon the payment to the holder of the total amount of instalments paid thereon, together with interest thereon at the rate of 8 per cent. per annum to date of cancellation.

XIV.

The qualification of voters at a meeting shall be that they shall be members in good standing as provided by the by-laws and be entitled to one vote for each share of stock held. Voting shall be by ballot, and the highest number of votes shall elect.

Any member may authorize another member by written proxy to vote his stock at any one meeting, provided such proxy shall specify the particular meeting at which the same is to be used, and the same shall be filed with the secretary of the home office at least twenty days before the opening of such meeting. In all other cases, the proxy given with the application for stock shall be operative.

XV.

The amount to be paid to the owners of shares at maturity shall be one hundred dollars ($100) per share.

XVI.

The by-laws of this association shall not be amended except at an annual meeting of said association and by a majority vote of the stock outstanding.

XVII.

The amount of capital stock of this association shall be fifty millions of dollars ($50,000,000) divided into shares of one hundred dollars ($100) each as provided by the by-laws.

The funds of this association shall be divided into two classes, which shall be called respectively the loan fund and the expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorney's fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payment on stock, and these funds
46 so constituted shall be devoted to the payment of operating expenses and said insurance and taxes. The loan fund shall consist of all receipts which do not go into the expense fund as hereinbefore provided together with all interests and accumulations from whatever source.

No money can be drawn from the loan fund for any other purpose than the making of loans on security as provided by the by-laws and to pay amounts due withdrawing shareholders.

The funds of the association not required for advances on shares may be invested by the board of directors in such securities as the savings banks of the State of New York are permitted to take, or deposited at interest in the savings banks, trust companies or duly incorporated banks of said State and which are in good standing.

XVIII.

The stock of this association may be issued in series if the board of directors may so decide.

The directors of this association may enter into such contracts and agreements and appoint such agents for its business management as they may deem for the best interests of its affairs.

XIX.

These articles of incorporation may be amended at any annual or special meeting of the association, provided the same is pre-
47 viously endorsed by resolution of the board of directors and adopted by a majority vote of stock of the association.

Dated Syracuse, February 22nd, 1890.

HENRY H. LOOMIS.
DWIGHT H. MURRAY.
JNO. J. W. REYNOLDS.
LUCIUS M. KINNE,
WILLIAM H. EMORY.
CHARLES A. POOLER.
ALEX. H. HUBBS.
ARTHUR B. KINNE.
ROBERT W. ANDREWS.

STATE OF NEW YORK, } ss:
Onondaga County, }

On this February 22nd, 1890, before me, the subscriber, personally appeared Henry H. Loomis, Dwight H. Murray, Jno. J. W. Reynolds, Lucius M. Kinne, William H. Emory, Charles A. Pooler, Alexander H. Hubbs, Arthur B. Kinne and Robert W. Andrews, to me known to be the persons named in and who executed the foregoing certificate and duly and severally acknowledged that they executed the same.

E. A. CHRISTY,
Com'r of Deeds, Syracuse, N. Y.

48 The foregoing articles duplicated in the original, signed and dated as follows:

Dated Syracuse, February 22nd, 1890.

HENRY H. LOOMIS, *President.*
DWIGHT H. MURRAY,
Vice-President.
JNO. J. W. REYNOLDS,
Secretary and General Manager.
LUCIUS M. KINNE, *Treasurer.*
SAMUEL R. STEARN, *Attorney.*
WILLIAM H. EMORY,
CHARLES A. POOLER,
ALEXANDER H. HUBBS,
ARTHUR B. KINNE,
ROBERT W. ANDREWS,
Directors.

SYRACUSE, *February* 22, 1890.

At a meeting of the undersigned incorporation of the Eastern Building & Loan Association held at the rooms of the State Bank of Syracuse in the Syracuse Savings Bank building, Syracuse, N. Y., the following proceedings were had:

Said Eastern Building & Loan Association effected a temporary organization by calling a meeting to order at 4 p. m. by electing as temporary president Henry H. Loomis and John J. W. Reynolds, secretary.

The articles of incorporation, a copy of which is hereto annexed, were duly signed and executed by all present.

49 By-laws were adopted after a full discussion of the same.

The following officers were then elected as provided by said articles of incorporation and said by-laws:

Henry H. Loomis, president.
Dwight H. Murray, vice-president.
John J. W. Reynolds, secretary and general manager.
Lucius M. Kinne, treasurer.
Samuel R. Stearn, attorney.

Directors:

Henry H. Loomis,	Dwight H. Murray,
John J. W. Reynolds,	Lucius M. Kinne,
Alexander H. Hubbs,	Charles A. Pooler,
William H. Emory,	Robert W. Andrews,

Arthur B. Kinne.

The place of business designated as Syracuse, N. Y., and the location at present 83, 84, and 85 Weiting block.

The articles hereto annexed are a true copy of the certificate of incorporation signed by the foregoing members and incorporators.

JNO. J. W. REYNOLDS,
Secretary and General Manager.

Verified.

50 EXHIBIT B.

Eastern Building and Loan Association.

By-laws.

ARTICLE I.

Name, Object, Location, and Duration.

SECTION 1. This association shall be known as the Eastern Building and Loan Association of Syracuse, N. Y.

SEC. 2. Its object is to afford its members a safe and profitable investment of their savings, to facilitate the purchase and improvement of real estate, and provide the advantages usually expected from savings banks and other institutions of like character.

SEC. 3. The principal place of business of this association shall be located at Syracuse, N. Y., but the branches or agencies may be located and business done in any part of the State of New York, or in any State or Territory of the United States where no legal prohibition exists, by authority of the board of directors, to be evidenced by a vote of the majority of the board, and spread upon its records.

SEC. 4. This association shall continue for forty years.

51 ARTICLE II.

Capital Stock.

SECTION 1. The capital stock of this association shall be fifty million dollars, divided into shares of one hundred dollars each.

SEC. 2. All stock shall be issued in monthly series, dated on the first day of the month of its issue. Each shareholder in good standing shall be entitled to one vote for each share of stock held by him, and on which all dues have been paid, at all meetings of the shareholders.

ARTICLE III.

Directors and Officers.

SECTION 1. There shall be elected by ballot nine directors of this association at the annual meeting thereof by a majority of the stock represented and voting.

SEC. 2. The officers of this association shall consist of president, vice-president, secretary and general manager (combined) and treasurer, to be elected by and from the board of directors. All vacancies in the board of directors caused by death, resignation or otherwise, and all vacancies from any cause, shall be filled by the board of directors until the next annual meeting of the association.

SEC. 3. The officers and directors of the association shall receive such salaries as the board of directors may deem advisable, provided the same must always be paid from the expense fund.

52 SEC. 4. All bonds to this association from any officer shall be first approved by the board of directors.

ARTICLE IV.

SECTION 1. The annual meeting of the stockholders shall be held at the home office of the association on the second Monday of May of each year commencing with the year 1891, between 2 and 4 o'clock p. m., of which due notice shall be given according to law.

ARTICLE V.

Board of Directors, Meetings, and Duties.

SECTION 1. Stated meetings of the board shall be held monthly on the first Tuesday of each month. Special meetings may be called by the secretary, or by request of two or more members of the board.

SEC. 2. It shall be the duty of the board of directors to pass upon the sufficiency of all property offered as mortgage security for loans, and attend generally to the financial affairs of the association. They shall have the management of the association not otherwise provided for in the by-laws, and the right to disburse such amounts as may be necessary to properly conduct the business of the association. They shall cause the secretary to mail to each shareholder, after each annual meeting, a general statement of the business of the preceding year and a report of the financial condition of the association, as found by them after a thorough examination. A majority of the board shall constitute a quorum for the transaction of any business.

53 ARTICLE VI.

President and Vice-President.

SECTION 1. It shall be the duty of the president to preside at all the meetings of the shareholders and of the board of directors, to

sign all certificates of stock and sign all releases of mortgages, and to perform all other duties usually appertaining to this office.

SEC. 2. The vice-president shall perform all the duties of the president in his absence. In case of any vacancy in that office he shall be *ex officio* president until the vacancy is filled.

ARTICLE VII.

Secretary and General Manager.

SECTION 1. It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all money paid into the association, and to pay the same over from time to time to the treasurer and take his receipts therefor, and keep all accounts of the association between the association and the shareholders; issue all notices; conduct all correspondence; draw and sign all orders on the treasurer, and sign all certificates of stock under the direction of the board.

SEC. 2. Whenever required by the board, he shall submit a statement in writing of the financial affairs of the association. The books of the association shall be kept by him, and at all times be subject to the inspection of the board. He shall, under the
54 direction of the board of directors, see to the settlement of all claims and bills, and shall keep insured all interest the association may have in any building or property liable to loss by fire; with the assistance of the attorney of the association, he shall protect its interests in all tax sales or forfeitures or foreclosures of property in which it may hold any interest, and for these purposes, is authorized to draw on the treasurer without further action of the board of directors, such payments to be reported at the next meeting of the board of directors. He shall receive from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association, and make proper entry of the same in books kept for that purpose. He shall give bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office and the direction of the board of directors.

SEC. 3. It shall be his duty, as general manager, to attend to all advertising, printing and publications; look after all bonds of agents, local and special; look after all property that is offered for security and report the same to the board, and to have the general supervision over all agencies, to appoint agents, assistants and other necessary help.

ARTICLE VIII.

Treasurer.

SECTION 1. It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board
55 of directors, signed by the secretary. He shall keep correct account of all moneys received and paid out by him. He

shall deposit with the trustee all abstracts of title, deeds, bonds, mortgages, contracts and other securities belonging to the association. He shall make to the board of directors, when required, a statement in writing or otherwise of the full business of his office. He shall furnish a satisfactory bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office, in conformity with the by-laws and the order of the board of directors.

ARTICLE IX.

Attorney.

SECTION 1. It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans, and certify in writing to the board of directors all facts that might affect the interests of the association, in case such security may be accepted.

SEC. 2. He shall prepare all papers incident to making sales and securing loans by the association, cause them to be properly executed, file the same for record in the proper office of the county, and when so recorded deliver the same to the secretary, and in general do and perform all things incident to his office.

ARTICLE X.

Official Bonds.

SECTION 1. All officers holding responsible positions shall
56 execute to the association such bonds for the faithful performance of their duties as the board of directors may require.

ARTICLE XI.

Funds.

SECTION 1. The receipts of said association shall be divided into two classes, which shall be called respectively the loan fund and expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorney's fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payments on stock, and this fund so constituted shall be devoted to the payment of operating expenses and said insurance and taxes.

SEC. 2. The loan fund shall consist of all receipts which do not go to the expense fund, as hereinbefore provided, together with all interest, fines, earnings and accumulations from whatever source. No money can be drawn from the loan fund for any other purpose than the making of loans on security, as provided by the by-laws, and to pay amounts due withdrawing shareholders.

ARTICLE XII

Eligibility.

SECTION 1. All new shareholders elected or appointed as directors or officers of this association shall concur in and accept the previous resolutions, agreements and obligations of said association, and shall only become eligible to such position after having performed all personal obligations agreed upon prior to their election or appointment.

SEC. 2. Persons not of lawful age can only become shareholders through their lawfully appointed guardians, who shall sign the application as provided by law.

ARTICLE XIII.

Elections and Inspectors.

SECTION 1. At the stated meeting of the board of directors next preceding the day appointed for the annual meeting, there shall be elected by the board of directors three shareholders, not candidates for election, to act as inspectors thereof, who shall receive the votes, count the same, and report in writing the names of the persons having the greatest number of votes, who thereupon shall by the president be declared duly elected, whereupon the secretary shall give notice to such directors.

Any member may authorize another member by written proxy to vote his stock, provided that all proxies shall be filed with the secretary at the home office at least twenty days before the opening of the meeting at which they are to be used.

ARTICLE XIV.

Contract of Members.

SECTION 1. The terms and conditions expressed in the certificates of stock, in connection with the application for membership and the by-laws of this association, form the contract between this association and each shareholder therein.

SEC. 2. All persons desiring to become shareholders of this association must fill out, sign and deliver to the secretary an application according to the form adopted by the association, which application shall be a part of said contract with this association. Such applicant shall also pay a membership fee of one dollar per share for each and every share held by him.

SEC. 3. All loans made by this association shall be upon satisfactory note and first mortgage secured on real estate, together with fire-insurance policy in some approved company if upon improved property, and for every one hundred dollars of loan made to a shareholder, who shall in addition thereto transfer in pledge to the association one share of the stock held by said shareholder as collateral security on all loans made by the association to a shareholder. Said shareholder shall pay an interest of five per cent. per annum and a premium of five per cent. per annum on all said loans. All

interest and stock payments shall be paid on the last Saturday of each month during the continuance of said loan, and at the same time the shareholders not borrowing shall pay their monthly payments at the principal office of the association.

SEC. 4. Abstracts of title must be furnished by the borrower, also the legal examination and opinion of the attorney of this association that the title to the property offered as security is clear
59 and owned in fee-simple, and he must so report. All such abstracts, searches, and attorneys' fees, and all fees for recording, drawing and canceling mortgage are to be paid by the borrower.

SEC. 5. Borrowing members who shall neglect to pay any installments on stock and interest on their loans, as the same become due, shall pay to the association a fine of twenty cents per month on each one hundred dollars that they may have borrowed from the association. Non-borrowing members who shall neglect to pay their monthly installments promptly shall pay to the association a fine of ten cents per month on each share of stock owned by them.

SEC. 6. Should a shareholder whose property is mortgaged to the association desire to release the same by prepayment of his indebtedness, he may on application to the association, be allowed to do so by giving thirty days' notice in writing of such intention, and be allowed an equitable discount therefor, to be fixed by the board of directors.

SEC. 7. Any shareholder may have his mortgage transferred from one piece of property to another by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

SEC. 8. Any shareholder may sell or transfer property mortgaged to the association, and the purchasers must assume all stipulations, agreements, and conditions of the original mortgagor by a proper instrument in writing, to be paid for at his own expense. Said person purchasing must also purchase the shares held by said shareholder, which will be transferred on the books of the associa-
60 tion to said purchaser, all assessments or installments thereon being paid up to time of transfer upon payment of fees therefor; or the association may accept a new mortgage from said purchaser to secure the former loan, until the expiration of said loan, upon the same or other sufficient property, upon payment of all fees and expenses thereof.

SEC. 9. All deeds, notes, leases, or other written instruments requiring to be executed, and all satisfactions and releases of mortgages and other indebtedness ordered by the board of directors, shall be signed in the name of the association by the president, or in his absence by the vice-president, and countersigned by the secretary, and when necessary acknowledged by the president and secretary of the association in their official capacity, and have the corporate seal attached.

SEC. 10. If any shareholder or any person shall neglect to pay the interest or installments on his loan, or the regular monthly installments, fees, or dues for six (6) months, the secretary may compel payment of principal, interest and premiums, assessments, fees, or

dues, by proceeding on his note and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the said shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the association. Punctuality and strict performance on the part of all members, borrowers, and shareholders, in payment of fines, dues, interest, loans, and premiums, are made the essence of the contract.

61 SEC. 11. Any shareholder may pay his installments, interest, and premium in advance, or deposit with the association a certain sum to be used for such payments as they may fall due, and the association will receipt for the same and notify when said deposit is exhausted.

If members make payments in advance for a period of six months and not over two years, a discount may be allowed at the rate of seven per cent. per annum for the time each payment is actually advanced.

SEC. 12. Any shareholder who has made a loan by giving taxable property as a security shall be bound to pay all State or city or other taxes or assessments as they become due, in addition to all other payments, and his failure to do so will make his loans, notes, mortgages, premiums and interest at once fully due, and payable at the option of the board of directors.

SEC. 13. Each share of stock shall be charged with any and all amounts that may be owing from the shareholder or of his assigns, to the association, whether in dues, loans, fines, interest or premiums, and all certificates of stock in said association shall, whether mentioned therein or not, be subject to a lien thereon, to secure any such indebtedness, and the right to deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the association.

SEC. 14. All shareholders shall pay or cause to be paid a monthly installment of seventy-five cents on each share named in their certificate, until the same shall be fully paid; said installment to be paid to the association on or before the last Saturday

62 of each month. Shareholders are required to pay monthly installments without notice.

SEC. 15. In case of change of residence or post-office address, name of the shareholder, or his or her legal representative, notice thereof in writing shall be given at once to the secretary of the association.

SEC. 16. All remittances for advance installments, premiums, monthly installments, fines and penalties, interest and premiums, and all other payments, shall be made to the secretary of the association at the home office, and in registered letter, express or money order or drafts. Individual checks shall not be receivable.

SEC. 17. Should the board of directors require further evidence of a claim than is given in the proof furnished on the same, it hereby reserves the right to extend the time of payment until such necessary proof is furnished and investigation is made. The association shall have sixty days after the filing of the proofs of a claim, and the approval thereof by the board of directors, in which to pay the

same, and this applies to claims maturing by death as well as to maturity of stock.

SEC. 18. If shares are withdrawn at any time before maturity, the holders thereof will be entitled to receive the amount paid into the loan fund in monthly payments; after six payments have been made on stock the holder thereof can withdraw his monthly installments that have been paid to the loan fund with interest at the rate of six per cent. per annum, seven per cent. after two years and eight per cent. after three years.

63 SEC. 19. Any shareholder wishing to withdraw his stock may be allowed to do so at any time, but the association shall not be required to pay out more than one-half of the net receipts of the monthly installments paid in that month, to withdrawing members.

SEC. 20. The association reserves the right to mature any certificate at any time after one year, and to issue a paid-up certificate of shares, payable at maturity of stock, with interest at the rate of six per cent. per annum, or at maturity of stock in pledge, payable at time of maturity of loan.

The association reserves the right to cancel any unpledged certificate after it has been in force three years, upon the payment to the owner, of the total amount of installments paid thereon, together with eight per cent. per annum as added dividend.

SEC. 21. And it is hereby expressly agreed between all shareholders and this association, that a payment of one hundred dollars per share, named in their certificate, that has been in force till maturity, shall be accepted as full payment of all claims on their certificate or against this association.

SEC. 22. Paid-up and non-assessable stock may be issued and sold at the price of fifty dollars per share, payable on date of issue. Any parties holding such paid-up stock, wanting to withdraw the same before maturity, may do so and receive six per cent. annual interest from the date of issue of said stock.

64 SEC. 23. Paid-up stock shall be indorsed by the trustee and cannot be withdrawn for one year from date of issue.

ARTICLE XV.

Loans.

SECTION 1. Each shareholder, for each share named in their certificate, shall be entitled to a loan of one hundred dollars from the association, provided they shall first make application for such a loan upon a blank furnished by the association for that purpose, if the condition of the loan fund in the treasury shall warrant it. All applications for loans shall be filed and numbered consecutively as received, and be examined and approved, or rejected, by the board in their regular order.

SEC. 2. All shares must be in force three months before said shareholder shall be entitled to a loan. All applications for loans are part of the contract of the shareholders with this association. Nothing herein contained shall prevent the board of directors from

loaning funds of the association to any member in greater sums than the above, provided upon approved securities.

ARTICLE XVI.

Local Boards.

SECTION 1. Whenever sufficient stock has been sold in any town to make it advisable, the members residing in each town may organize a local board or branch of the association. The officers of the local organization shall consist of a board of from five to nine directors, from whose number shall be elected a president, secretary and treasurer (combined), and attorney; all of whom must be shareholders in the association; these officers shall hold office one year and until their successors are elected.

SEC. 2. The traveling agents of the association are given authority to appoint the first officers of the local board. Provided, however, that officers so appointed shall only hold office until the members of the local board meet and elect their successors.

SEC. 3. It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the association from members residing in the town where such local board is located, and to protect the interest of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer. But such local treasurer shall be deemed to be the agent of the members and not of the association.

SEC. 5. As soon as the officers of the local board have been appointed or elected and the names of such officers have been certified to the association by a traveling agent or by the local secretary, a local-board charter shall be issued to such board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him to do so.

ARTICLE XVII.

By-laws—Amendment.

SECTION 1. No amendment shall be made to these by-laws unless previously indorsed by resolution of the board of directors and adopted by a majority vote of the stock of said corporation.

EXHIBIT C.

This indenture, made this first day of May in the year of our Lord one thousand eight hundred and ninety-one, between Lawrence S. Welling and Marion Bonnoitt of Darlington, S. C., of the first part, and the Eastern Building and Loan Association of Syracuse, N. Y., a body corporate, party of the second part:

Witnesseth, that the said parties of the first part, in consideration of the sum of five thousand dollars, to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these presents

do grant and convey to the said party of the second part, its successors and assigns, all that tract or parcel of land situate in the town of Darlington, county of Darlington, and State of South Carolina.

Description of Property.

With the appurtenances, and all the estate, title and interest therein of the said parties of the first part; and the said Lawrence S. Welling and Marion Bonnoitt do hereby covenant and agree to and with the party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents they are the lawful owners and are well seized in fee simple
67 of the premises above conveyed, free and clear of all incumbrances, of every name and nature, legal or equitable; and that the premises thus conveyed in the quiet and peaceable possession of the said party of the second part, its successors and assigns, they will forever warrant and defend against any person whomsoever lawfully claiming the same, or any part thereof.

This grant is intended as a security for the payment of the sum of sixty-one hundred seventy-seven and $\frac{60}{100}$ dollars, the same being the principal, interest and premium of a loan from said association, which said loan was made pursuant to and accepted under the provisions of the by-laws of said association, and which said by-laws have been read by the mortgagors and are hereby made a part of this contract, which said loan is evidenced and secured to be paid by seventy-eight (78) certain promissory notes of even date herewith executed by the said Lawrence S. Welling and Marion Bonnoitt, payable to the said association, at its office in Syracuse, as follows: One of each of said notes is to be paid on or before the last Saturday of each and every month until all of the seventy-eight notes are fully paid, together with interest on each of said notes after maturity at the rate of six (6) per cent. per annum payable semi-annually until said notes are fully paid.

And the said mortgagors for themselves and their heirs, executors, administrators and assigns, hereby covenant and agree with the party of the second part, its successors and assigns, to pay said principal, interest and premiums at maturity and the interest ac-
68 cruing on said notes after maturity, and all fines and penalties that may be imposed pursuant to the provisions of the constitution and by-laws of said association, and also keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association; also to keep the buildings erected and to be erected upon said premises insured against loss or damage by fire in an amount not less than three thousand dollars, in such manner and in such company as shall be most satisfactory to the party of the second part, its successors or assigns, so that the loss or losses, if any, shall be payable to it or them, and from time to time when taken out issued on said premises, which policies shall contain the best and most approved form of mortgagee clause, and at once make due proofs in case of loss, and do all other things required, deliver over to it or them all policies and renewals thereof,

by said policies; and also pay and discharge when due and payable all taxes, assessments, rates and other charges, now or hereafter levied or assessed upon said premises, and remove all adverse claims, clouds and encumbrances, also that, until full payment of the money hereby secured, nothing shall be done or suffered whereby said premises shall be diminished in value, or any of said policies of insurance affected or vitiated. In case default shall be made in effecting such insurance, or paying, discharging or removing such taxes, assessments, rates, other charges, adverse claims, clouds or encumbrances as aforesaid, it shall be lawful for said second party, its successors or assigns, to effect such insurance and pay such taxes, assessments, rates, other charges, adverse claims, clouds or
69 encumbrances, and the amount so paid shall be a lien on said premises added to the amount secured by these presents and forthwith due and payable without demand with interest, and may be collected in the same manner as the principal sum hereby secured.

And it is hereby expressly agreed, by and between the parties to these presents, that if default be made in the payment of any one of said notes, or any part thereof, as herein provided, or in case of waste, or non-payment of taxes, assessments, or impositions on said premises or in case of neglect or refusal to keep the premises insured, as herein provided, or in case the improvements thereon shall not be kept in good order or repair, or in case of a breach of any of the covenants or agreements contained herein, or in case of a failure to duly observe and keep the by-laws of the said association, and in either or any of such cases, the whole of the said principal sum, interest, premiums, fines, dues and costs, shall at once become due and payable at the option of said association, its successors or assigns; and it shall be lawful for said association, or its successors or assigns, at any time thereafter to sell the premises hereby granted; or any part thereof, in the manner prescribed by law, and out of all moneys arising from such sale, to retain the amount due and unpaid for principal, interest, premiums, fines, dues and costs thereof, taxes, assessments, impositions, insurance and other advances, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party making such sale, on demand to the said Lawrence S. Welling and Marion Bonnoitt or their heirs or assigns.

70 And this conveyance shall be void if full payment of the aforesaid moneys, both principals and interest, be made as hereinbefore specified and if the aforesaid covenants and each of them be well and truly kept and performed as herein specified and provided.

In witness whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

LAWRENCE S. WELLING. [L. S.]
MARION BONNOITT. [L. S.]

Sealed and delivered in the presence of—
D. M. SMOOT.
E. O. WOODS.

Probated.

EXHIBIT C 1.

A Copy of the Seventy-five Notes for Seventy-nine and $\frac{20}{100}$ Dollars.

No. —.

On or before the last Saturday of August, 1891, I promise to pay seventy-nine and $\frac{20}{100}$ dollars $79.20 to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y.
Value received.

LAWRENCE S. WELLING.
MARION BONNOITT.

Darlington, S. C., May 1st, 1891.

71 EXHIBIT C 2.

A Copy of the Last Three Maturing Notes for $41.70.

No. —.

On or before the last Saturday of August, 1897, I promise to pay forty-one and $\frac{70}{100}$ dollars $41.70 to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y.
Value received.

LAWRENCE S. WELLING.
MARION BONNOITT.

Darlington, S. C., May 1st, 1891.

EXHIBIT D.

The Definite Contract Plan.

Eastern Building and Loan Association of Syracuse, N. Y.

Authorized capital, $50,000,00.00.

Incorporated under the laws of the State of New York, under the supervision of the New York State banking department.
Home office: N. W. cor. Salina and Fayette Sts.
Depository: Trust & Deposit Co., of Onondaga.
New York correspondent: Hanover national bank.

72 Eastern Building and Loan Association of Syracuse, N. Y.

America's leading building association.

Officers and directors:

H. H. Loomis, president, capitalist.
D. H. Murray, vice-president, physician and surgeon.
Jno. J. W. Reynolds, sec'y and gen'l manager, building and loan.
Lucius M. Kinne, treasurer, paying teller Trust & Deposit Co. of Onondaga.

W. S. Emery, assistant secretary, formerly m'g'r Syracuse Cabinet Co.

M. H. Bunn, ass't gen'l manager, building and loan.

Chas. A. Pooler, sup't of agencies, building and loan.

Alex. H. Hubbs, manager loan department, formerly real estate.

A. B. Kinne, director, physician and surgeon.

D. A. Pierce, attorney.

Every dollar loaned on first mortgage on inside, improved real estate.

No idle money.

Interest compounded monthly.

Officers and agents bonded. Amount of bonds Dec. 1st, 1891, $703,850.00.

73 Building associations are no longer an experiment. The insolvency of a building association is an unknown occurrence. They commend themselves to every community because they furnish the best facilities for borrowing money and, at the same time, retain the benefits of the interest otherwise paid to distant capitalist-, while not the least of the benefits which such organizations confer are the habits of saving which they engender and promote. We feel warranted in saying that no system of investment known in this country has proven to be so universally satisfactory to all concerned as the building and loan system. The system herein presented places the poor man's monthly savings on an equality with the millionaire's surplus, and thereby enables one dollar to earn as much singly as if it were a part of thousands. It affords its shareholders all the advantages of the accumulations of small or large sums of money at more than compound interest, besides being a substantial investment secured by real-estate mortgages. It affords every man the advantage of becoming the owner of his own fireside, and feeling that there is one place on earth he can call "home." Every man struggles to provide a home for his family, and it is his aim to become the owner of it in the shortest possible time.

For the instruction of the reader we here submit a short catechism:

Q. What is the Eastern Building and Loan Association?

74 A. It is in the nature of a co-operative bank, in which the members are equal partners and the deposits are loaned only to the shareholders.

Q. How are deposits made and regulated?

A. Deposits are small monthly instalments on shares, paid to the association, and are practically compulsory under the by-laws.

Q. How often are the profits divided?

A. Only when stock matures and reaches its par value.

Q. What is the meaning of stock maturing?

A. When the amount deposited, together with accumulated profits, amounts to one hundred dollars on each share.

Q. What amount is deposited monthly?

A. Seventy-five cents per share.

Q. How many shares can each member hold?
A. Two or more shares.
Q. Can women hold shares?
A. Yes.
Q. When will the shares reach their par value?
A. Shares mature in exactly six and a half years.
Q. How much will a member have to pay in altogether?
A. On a basis of ten shares (one thousand dollars maturity value) he will have paid in five hundred and ninety-five dollars ($595) and receives one thousand dollars.
Q. And does a stockholder have to wait until maturity before he can draw his profits?
75 A. He does, unless he wishes to withdraw entirely, in which event his money is refunded with an equitable amount of dividend added.
Q. When can he withdraw?
A. He can withdraw at any time by giving thirty days' notice of such intention.
Q. Is the stock transferable?
A. It can be transferred at any time.
Q. How is money loaned?
A. On first-mortgage real-estate security, invariably, appraised by members of the local board where the loan is made, who, being investors, are directly interested in the securities. (See page 12.)
Q. How is the priority as to borrowing decided?
A. Borrowing members take their turn in receiving money in the same order as the applications are received.
Q. Are there any penalties for delinquencies in making payment?
A. There are. Members in arrears are fined ten cents per share per month, which amount they must pay, together with back dues, to keep their shares in force.
Q. What is the object of this association?
A. The main object is to assist each other in saving money, and having what that money earns.
Q. What is the cost of joining this association?
A. The admission fee is one dollar a share, which is paid but once.
Q. Are there any extra assessments?
A. There are none and can be none.
76 Q. Are there any other charges?
A. There are none except for fines, and no one need be fined if he is punctual in paying his installments.

Plan.

The capital stock of the Eastern Building and Loan Association is divided into shares of $100 each, par value at maturity. Any person, male or female, may become a shareholder, and may apply for two or more shares. All shares on which payments are made are regularly matured at the expiration of seventy-eight months (six and one-half years) from date of certificate.

Membership Fee.

Membership fee for each and every share (installment stock) is one dollar per share, and must be paid to the agent when application is made.

Monthly Installments.

Monthly installments are seventy-five cents on each one-hundred-dollar share; first installment due on or before last Saturday of the month in which the certificate is dated, and must be sent to the home office or paid to the local-board treasurer, or a legally authorized collecting agent, on or before the last Saturday in each month, without notice.

Fines.

If monthly installments are not paid when due a fine of ten cents a share is fixed as a penalty for each month the payment is delinquent, but no share can be retired unless it has been in arrears six months. All fines go to the loan fund, as profits to members.

77 *Loans.*

The money accumulated in the loan fund is loaned to the first approved application from a member. Loans can be made only to members. All loans must be amply secured by first-mortgage real-estate security. Loans will only be made upon shares that are three months old, and in good standing. For illustration—suppose a party owns a town lot worth four hundred dollars or upwards, and after he becomes a shareholder desires to borrow one thousand dollars with which to build a home, and he has ten shares of one hundred dollars each, amounting to one thousand dollars. When the shares are three months old or more, he can make application for a loan on blanks furnished by the association, which he fills out, offering a first mortgage on his lot and the improvements to be made thereon with the money so borrowed. If the association, through its directors, on inspecting his application, finds that the security offered is sufficient, and that all is as represented and all the requirements have been complied with, his application will be approved, and he will be entitled to the next loan; but, should there be several ahead of him, he will take his regular turn, as all applications for loans are taken up in their regular order.

All interest and premiums are payable monthly at the time of paying monthly instalments.

This association has no auction system, whereby some members are inveigled into paying large premiums, but all members pay alike for money borrowed and take their regular turns in receiving loans.

78 *Illustration.*

Showing costs and profits to the investor of ten shares of $1,000 in six and one-half years, at time of maturity:

He pays a membership fee of $1.00 per share	$10.00
He pays monthly instalments of $7.50 per month for 78 months, $7.50 x 78	585.00
Total amount invested	595.00
He receives in cash at maturity	1,000.00
His net gain is	$405.00

Illustration.

Showing the cost of $1,000 loan on ten shares of stock for six and one-half years:

He bids ten per cent. ($100), which is deducted from the $1,000 borrowed	
He pays $15.84 per month for 78 months	$1,235.52
He paid for stock	10.00
Total	$1,245.52

It will be seen from the above that $345.52 is the amount paid in excess of the actual amount received on loan. This for the use of the money for six and one-half years. Thus the borrower pays less than six per cent. per annum.

He also pays $10 attorney's fees for examining title.

79 *How to Remit.*

Remittances can be sent to the secretary at the home office by express order, post-office order, draft, or express, and the secretary will receipt for the same by return mail, or they can be paid to local board treasurer. Any shareholder desiring to pay his monthly instalments semi-annually in advance can do so, and will receive a discount of five per cent. per annum on the money for the time actually advanced, and in this way avoid fines through forgetting and allowing the date of payment to pass.

Assignment of Shares.

Any member may sell and assign his shares by filling out the assignment on the back of his certificate (having his signature witnessed) and forwarding to the home office with two dollars for approval and transfer on the books of the association. The assignee thereof shall be entitled to the same benefits as the original holder of the certificate. Shares cannot be assigned unless square upon the books of the association to date of assignment. No assignment of shares will be valid unless the approval of the secretary is endorsed thereon.

Withdrawal of Shares.

See inside of back cover.

Loans without Real-estate Security.

After shares have been in force a year the holder may obtain a loan on them without other security than the pledging of
80 his shares to the association as collateral, but not to exceed ninety per cent. of their pass-book value. This will enable members who own no real estate to obtain small loans from time to time without paying the exorbitant interest charged by note brokers. No legal fees are charged upon this class of loans.

Paid-up Stock.

Paid-up stock is issued and sold at the price of fifty dollars ($50) per share, payable on date of issue. Parties holding such paid-up stock, wanting to withdraw the same before maturity may do so after certificate has been in force one year, and receive six per cent. annual dividend from the date of issue to date of withdrawal.

This association issues fully-paid certificates at $100 per share, on which the holder receives seven per cent. dividend. Dividend paid quarterly.

(For full particulars regarding paid-up stock and fully-paid certificates, see form No. 79.)

Local Boards.

Whenever sufficient stock has been sold in any town to make it advisable, the members residing in such town may organize a local board or branch of the association.

The officers of the local board shall consist of from five to nine directors who must be shareholders, from whom shall be elected the president, vice-president, secretary and treasurer (combined), and attorney.

The authorized agents of the association have the authority to appoint the first officers of the local board, provided, however,
81 that such appointees shall only hold office until their successors are elected by the members.

A local-board charter will be issued to said board as soon as the agent shall certify to such election or appointment.

Every thoughtful and intelligent man will appreciate the importance of the following arrangement for handling the funds:

The trustee shall receive from the treasurer each month all mortgages, bonds and securities belonging to the association.

The secretary is required to deposit all funds in the hands of the treasurer, and he to deposit the same in the depository of this association.

No money can be withdrawn from the treasury for any purpose except by a check signed by the secretary and countersigned by the treasurer, upon an order stating the purpose for which such money

is drawn; such order to be signed by the chairman of the executive committee, as authorized by the board of directors. (Extract from resolutions adopted March 4, 1890.)

This renders extravagance, mismanagement and dishonesty on the part of the managers and agents of this association impossible.

Special Notice.

No agent has power to waive or alter any of the conditions or terms expressed in the certificate of shares or to make any
82 statements other than embraced in the printed literature; and, further, the asciation will not be responsible for any bills contracted by any person claiming to be a representative of this association, or for any monies collected (except membership fees on installment shares), unless explicit authority is given him by the secretary and general manager, which he will have in writing.

Agents or representatives have no authority to promise loans as to time or amount.

For ready reference we submit the following schedule:

Number of shares.	Monthly instalments due on or before the last Saturday of each month.	Maturity value of shares at end of 6¼ years.	Total amount of instalments paid in 6¼ years.	Shares.	Monthly payments by borrower which pay up loan and interest in 6¼ years.
2	$1.50	$200	$117	2	$3.17
3	2.25	300	175.50	3	4.75
4	3.00	400	234	4	6.34
5	3.75	500	292.50	5	7.92
10	7.50	1,000	585	10	15.84
20	15.00	2,000	1,170	20	31.68
30	22.50	3,000	1,755	30	47.52
40	30.00	4,000	2,340	40	63.36
50	37.50	5,000	2,925	50	79.50
100	75.00	10,000	5,850	100	158.40

For further information regarding the details or the workings of the association, call on or address

JNO. J. W. REYNOLDS,
Secretary and General Manager, Syracuse, N. Y.

83 This is what appears on inside of back cover:

The all-important feature. Practiced only by the "eastern" call withdrawals.

Any shareholder may withdraw his monthly instalments paid to the association at any time, provided no payments of fines are due and unpaid, by his giving thirty days' notice, and will receive 6 per cent. dividend on all stock of six months' standing up to two years: the third year 7 per cent.; any time after the third year and before maturity 8 per cent. Withdrawals payable only at the home office.

The withdrawal feature is an all-important question to the would-

be investor. The plan as originated and in use by the "Eastern" is the only equitable one, inasmuch as it does not discriminate against the poorer class, or those unfortunates, who, because of sickness, loss of position or otherwise, are liable at any time to become unable to keep up their monthly instalments. It is only the wealthy who can place their money beyond their reach, for a term of years, consequently under the forfeiture system in use by other companies, it is this class who receive the benefit at the expense of the less fortunate.

No other restrictions imposed.

This is what appears on back of cover:

The only association making a contract definite in every particular.

84 Withdrawal value clearly stated and never less than the amount paid in instalments.

Stock matures in 78 months.

Borrowers know the exact amount required to cancel their mortgage.

No auction system, no lapses, no forfeitures.

No loans made on farm property, churches, schools, summer hotels or resorts, mills, factories or any property designed for other than general purposes.

EXHIBIT E.

Supt.	Cashier.	Stock. 2 | 3 | 91	Recorded.	Indexed.	Filed.	Mailed.

50 shares. Number 496.

Application for Shares in the Eastern Building and Loan Association of Syracuse, N. Y.

Agent, Samuel Carpenter, general agent.

I, Welling & Bonnoitt, of Darlington, county of Darlington, State
Name. Town. County.
of South Carolina, No. of street or P. O. box, ——, occupation, hard-
State. Street No. or box.
ware merchants, hereby apply for membership in the Eastern

85 Building and Loan Association of Syracuse, Onondaga county, New York, and subscribe for fifty shares of regular stock.

I hereby agree to abide by all the terms, conditions, and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said association. And do also hereby, in order to facilitate the transaction of business of the Eastern Building and Loan Association of Syracuse, N. Y., make, constitute, and appoint the secretary of said association, for me in my name, place and stead, to appear and vote as my proxy upon any and all shares of stock, at any time, held by me, or standing in my name in said association during my absence, at any and all

meetings of stockholders or directors, and upon any and all matters which may properly come before any such meeting, and attorneys, one or more under him, from time to time in writing to appoint, hereby authorizing, ratifying, and confirming all that my said attorney, or his substitute, may do or cause to be done as such proxy by virtue hereof.

This proxy is not in any manner to affect my right to vote on all such stock whenever I am personally present at any stockholders' meeting.

In witness whereof I have hereunto set my hand and affixed my seal this 28th day of January, A. D. 1891.

Signature of applicant:

WELLING & BONNOITT, [SEAL.]

SAMUEL CARPENTER, *Witness.*

The price of stock must accompany this application.

86 EXHIBIT F.

Copy of Certificate of Shares.

Series No. B–2. Maturing Aug. 1st, 1897.

Eastern Building & Loan Association of Syracuse, N. Y.

Certificate number. Number of shares. Amount.

This certifies that Welling & Bonnoitt of Darlington, county of Darlington, and State of So. Carolina, are hereby constituted shareholders of the Eastern Building & Loan Association of Syracuse, N. Y., incorporated under the laws of the State of New York, and holds ten shares therein of one hundred dollars each, and in consideration of the membership fee, together with agreements and statements contained in the application for membership in the association, and full compliance with the terms, conditions, and by-laws printed on the front and back of the certificate, which are hereby referred to and made a part of this contract, and the said Eastern Building & Loan Association of Syracuse, N. Y., agree to pay said shareholders or their heirs, executors, administrators, or assigns, the sum
87 of one hundred dollars for each of said shares at the end of seventy-eight months from the date thereof, or in case of their death prior to the expiration of seventy-eight months, the association will pay the sum of all monthly installments paid on this certificate, with interest at 6 per cent. per annum, payable in the manner and upon the conditions set forth in said terms, conditions, and by-laws hereto attached. All payments under this certificate are payable at home office of the association, at Syracuse, New York, within sixty days after the acceptance and approval of satisfactory proofs. This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay, or cause to be paid, a

monthly installment of seventy-five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month until such share matures or is withdrawn.

Second. If the shareholder shall fail to pay, or cause to be paid, any monthly installment on or before the last Saturday in each month, he shall pay a fine of ten cents per share for each and every month the payment may be in arrears.

Third. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past due and payable for a period of six months or more, such share shall be sold at auction for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines; the balance remaining after paying all accrued
88 fines and monthly payments shall be paid to the member in whose name the stock stands at the time of the sale. If the stock brings no more than enough to pay the accrued fines and monthly payments it shall be bid in by the association and canceled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

Fourth. Any member may withdraw their monthly instalments at any time by first giving thirty days' notice, and will receive 6 per cent. annual interest on all shares of six months' standing and up to two years; the third year 7 per cent.; any time after the third year and before maturity 8 per cent.

Fifth. If a shareholder dies his personal representatives may withdraw his shares at any time, or to continue on to maturity.

Sixth. At stated periods the profits arising from interest, premiums, fines, and other sources shall be apportioned among the shares in good standing.

Seventh. All payments must be paid to an authorized agent, or sent to the secretary at the home office by draft, express or money order, or registered letter. Individual drafts or checks not receivable.

Eighth. The association reserves the right at any time to make an investigation in all cases prior to the approval of claims.

Ninth. The by-laws of this association, which are attached to and indorsed herein, are a part of this contract, and such by-laws
89 and this certificate are to be construed together as part of the contract between the association and the shareholder.

Tenth. No shares shall be assignable or transferable on the books of the association, except by the shareholder paying a transfer fee of two dollars for entering the same, and upon consent of the association, indorsed thereon by the secretary, after all dues and claims on the same have been paid.

Eleventh. It is agreed by all shareholders of this association that desire loans, that all money in the loan fund shall be sold at a uniform rate of ten per cent., bid as premiums on all loans.

Twelfth. No shareholder shall have any claim to any interest in the affairs, assets or funds of this association, nor the control of them, except as above specifically set forth, and assumes no further liability of any kind whatsoever, except as hereinafter described.

Thirteenth. In every case where this contract shall cease and determine, or become null and void, then all payments made thereon, shall become forfeited to the association.

Fourteenth. Any action brought against this association shall be commenced within six months after filing proofs, and in the county of Onondaga and State of New York.

Fifteenth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

90 Given under the seal of said association, at Syracuse, New York, this second day of Feb'y, A. D. 1891.

JNO. J. W. REYNOLDS,
Secretary and Gen'l Manager.

[L. S.] H. H. LOOMIS, *President.*

The following is found on back of certificate:

The within-mentioned shares of stock in the Eastern Building and Loan Association of Syracuse, N. Y., are hereby withdrawn, and I have this day received the sum of one thousand dollars in full of the amount due me by reason of such withdrawal.

Dated at Darlington, S. C., May 1st, 1891.

LAWRENCE S. WELLING. [L. S.]
MARION BONNOITT.

Witness:
E. O. WOODS.

EXHIBIT G.

Application for Loan from the Eastern Building and Loan Association of Syracuse, N. Y.

We do hereby make application for a loan of five thousand dollars, for six and a half years, to bear interest at the rate of
91 five per cent. per annum, and a premium of five per cent. per annum, payable on or before the last Saturday of each month; all payments to be paid at such place as the lender may direct; and to secure the same we agree to give a mortgage on the real estate set forth in the following questions and answers:

Here follows description of property.

If this application is accepted, I will furnish at my own expense a complete abstract of title to the land proposed as security, and have the same certified to be correct by the proper county officers, which shall be brought down to a date subsequent to the filing of the instrument securing my loan, and show a clear and perfect title in the mortgagors. Also attorney's search and pay expenses of examination and appraisement of the property, and pay for recording the mortgage or trust deed, and I further agree to forward with said paper ten dollars ($10) to pay the attorney of the association for making the examination of the same. I also agree to furnish the mortgagee each year during the continuance of said loan with

evidence that all taxes and other assessments against said property have been paid. I also agree to keep the property insured for $3,000.00 in favor of the mortgagee and to bid a premium of ten per cent. upon loan.

Dated at Darlington, So. Ca., this 6th day of April, 1891.

(Signed) L. S. WELLING,
For Welling & Bonnoitt.
M. BONNOITT,
For Welling & Bonnoitt.

92 EXHIBIT H.

AUGUST 23D, 1897.

The Eastern Building and Loan Association, Syracuse, N. Y.

GENTLEMEN: We send you prepaid by express this day forty-one and $\frac{70}{100}$ dollars ($41.70). This money to pay our note due you on or before the last Saturday in August, 1897. Please send us our note upon receipt of money.

Very resp'ct'y, WELLING & BONNOITT.

EXHIBIT I.

SYRACUSE, N. Y., *August* 28, 1897.

Messrs. Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: Your remittance of $41.70 by express was duly received and the same has been credited to the account of your loan. The amount, however, is not sufficient to meet the entire payment due from you the last Saturday of this month owing to the fact that the shares will not mature in the estimated period of seventy-eight months. In the early history of the association it was thought that the monthly payment of 75 cents per share loaned out under the then existing plan would mature shares in seventy-eight months, but our experience has been such as to clearly demonstrate the impossibility of so doing. The four years of depression
93 through which the country has passed was not anticipated at that time, but even under the most favorable conditions with all branches of business prosperous thereby placing every borrower in the best position possible to favor his meeting the payments as they became due, it is quite questionable whether the earnings would have produced the anticipated result.

When the financial statement was taken from our books early in January of this year, we found that the past year had made great inroads into the profit account of the association, and that the book value of shares was considerably less than they had been supposed to be until the figures were ascertained. Immediately thereafter the management considered ways and means of managing the affairs of the association with a view of meeting the existing conditions in a manner that would bring about the best result to every person interested. The proceedings of the annual meeting, a copy of which was sent every shareholder, sets forth the views and actions of the membership upon that occasion. It doubtless is a disap-

pointment to every shareholder to be told that his shares are not worth as much when seventy-eight months old as they anticipated, but every shareholder, being a copartner in the affairs of the association, can realize no more for their investment than the business has yielded. The undivided profit account at that date was ascertained and set apart for the benefit of existing shares, and the experience of the association since has been to enhance the value of the shares and in addition thereto losses aggregating quite a number of thousand dollars have been provided for from the current earnings of the association.

94 If your shares had reached the maturity value of $100.00 each the amount remitted by you would be sufficient to meet in full the payment due today, but as the shares have not matured owing to reasons above given, it becomes necessary for you to continue the regular full payments upon your loan amounting to $79.20 each; having paid $41.70 for this month there is still a balance of $37.50 due as of this date, which under the circumstances you may remit direct to this office without including any fine thereon.

Yours very truly,

M. H. BUNN,
Mgr. Loan Dept.

EXHIBIT J.

SEPT. 1ST, 1897.

The Eastern Building & Loan Association.

GENTS: We enclose receipt sent us for money sent you by us per prepaid express on August 23rd, 1897. You will see by our letter of that date that we sent you the money for a specific purpose, namely, to pay our note due you on or before the last Saturday in August, 1897. Now we make this demand on you, that you apply the money for the purpose sent, and forward us our note at once.

Very respect'y, WELLING & BONNOITT.

95 EXHIBIT K.

SYRACUSE, N. Y., *September* 8, 1897.

Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: Your favor of the 1st inst. at hand. You have already been advised what it will be necessary for you to do relative to payments upon your loan, the matter being fully explained in my letter of August 28th. As heretofore stated and as shown in the receipt sent you, your remittance by express has been applied upon your loan which is the only disposition that can be made of the same. If this is not satisfactory to you upon your request the money will be refunded. It cannot be accepted as settlement in full of the payment due the last Saturday in August for reasons heretofore given.

Yours very truly,

M. H. BUNN,
Mgr. Loan Dept.

EXHIBIT L.

SEPT. 17, '97.

The Eastern Building and Loan Association, Syracuse, N. Y.

GENTLEMEN: Yours of the 8th inst. to hand, contents noted. Our note for $41.70 was due you the last Saturday in August. We sent you the amount and specifically directed you to apply same to the payment of the note, you have received the money and under
96 the law are obliged to apply it as directed. We therefore protest against the attempted application of the $41.70 to any other supposed or alleged account other than to the payment of the note. We deny that we owe you upon any other account than as represented by the note, and therefore demand of you the cancellation and surrender of our note for which we have remitted and you have received payment.

Yours truly, WELLING & BONNOITT.

EXHIBIT M.

SYRACUSE, N. Y., *September* 22, 1897.

Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: Your favor of the 17th inst. at hand. The remittance made by express amounting to $41.70 cannot be accepted in full of the payment due from you to this association upon the last Saturday in August as has heretofore been stated to you. You were advised in my letter of the 8th inst. that if the application of the amount was not satisfactory to you the money would be refunded. As your letter just received expresses dissatisfaction, I enclose herewith draft on New York for the amount. Each monthly payment due from you upon the loan amounts to $79.20 provided the same is paid in time to avoid fines. Under the circumstances, if you see fit to remit at once, the amount named to meet the August
97 payment, the same will be accepted without any fine. A like amount is also due the last Saturday of this and each succeeding month until further notice.

Yours very truly, M. H. BUNN,
Mgr. Loan Dept.

EXHIBIT N.

SEPT. 22, '97.

The Eastern Building and Loan Association, Syracuse, N. Y.

GENTLEMEN: Enclosed find $50.04. We send you this to retire note of Welling & Bonnoitt for $41.70 and A. W. Welling $8.34 due on or before last Saturday in September, and ask that you credit it in that way and return our notes cancelled.

Yours truly, WELLING & BONNOITT.

EXHIBIT O.

SYRACUSE, N. Y., *September* 25, 1897.

Messrs. Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: Your favor of September 22nd enclosed in an express envelope containing $50.04 which you request to be
98 applied for the purpose of retiring the September note on loan No. 105, Welling & Bonnoitt, $41.70 and on loan No. 253, A. W. Welling, $8.34 is hereby acknowledged. Replying thereto beg to say that we cannot accept these amounts in settlement of the payment falling due the last Saturday of September on either of these loans. The several amounts have been credited to the respective loans. If this is not satisfactory the same will be refunded upon your request to do so. The amount due this day upon the Welling & Bonnoitt loan is $79.20 and upon the A. W. Welling loan the amount is $15.84 and no lesser sum will be received by this association in settlement of the amounts due this date. Partial payments can, under no circumstances, be accepted or allowed.

Yours very truly,

M. H. BUNN,
Mgr. Loan Dept.

EXHIBIT P.

SEPTEMBER 28, '97.

Eastern Building and Loan Ass., Syracuse, N. Y.

GENTLEMEN: Enclosed we send you $41.70 to take up our note due on or before last Saturday in October, also $8.34 for A. W. Welling for his note due at the same time as ours, in addition send satisfaction of the respective mortgages that were given to secure said notes. That being the entire balance due you on both
99 mortgages, we in addition enclose you $1.00, being 50c. each to have satisfaction probated.

Hoping that you will return notes and mortgages with enclosed satisfaction executed as requested at an early date.

Yours truly,

WELLING & BONNOITT.

EXHIBIT Q.

SEPTEMBER 30, 1897.

The Eastern Building and Loan Association, Syracuse, N. Y.

GENTLEMEN: Your favor of 22d inclosing your draft on Bank of Syracuse for $41.70 received. We return your draft herewith, as we have no right to it. Your favor of 25th inst. also received, and we beg to say in reply that we instructed you in our letter of 25th inst. what to do with the money.

Yours truly,

WELLING & BONNOITT.

EXHIBIT R.

SYRACUSE, N. Y., *November* 24, 1897.

Welling & Bonnoitt, Darlington, S. C.

GENTLEMEN: We are advised that you refuse to receive the
100 express package forwarded you by me November 3rd. I desire to call your attention to the letter which was enclosed therein, which reads as follows: "Enclosed herewith find the remittance recently made by you amounting to $51.04, being the same bills and stamps enclosed by yourselves with the intention that $41.70 of the amount should be applied upon the loan of Welling & Bonnoitt, No. 105, and $8.34 on loan of A. W. Welling, No. 253. We cannot accept the amounts for the purposes tendered, for reasons which have already been explained.

I also enclose a New York draft payable to your order for $8.34, this amount, together with $41.70, having been forwarded by you the 22d of September, and by oversight the entire remittance, amounting to $50.04, was credited to loan No. 105, Welling & Bonnoitt upon our ledger. The above being forwarded to you by express, charges prepaid.

Yours very truly, M. H. BUNN,
Mgr. Loan Dept.

P. S.—I neglected to state that $1.00 of the above-mentioned $51.04 was for the purpose of procuring satisfaction of the mortgages.".

Yours very truly, M. H. BUNN,
Mgr. Loan Dept.

101 *Defense.*

The defendant submits a motion for nonsuit on the ground that there is no evidence that the mortgage was paid according to the terms and provisions of the by-laws of the association and according to the laws of the State of New York, that this contract is to be construed according to the laws of New York, and there is no evidence before the court showing what the laws of New York are; further upon all the evidence or proof in the case there is nothing to show a compliance and payment with the terms of the contract; and further that the only evidence of compliance with the contract is that seventy-five notes were paid and three others offered to be paid, and that the premises were kept insured and fines paid.

The motion was refused. Defendant excepts.

Defendant's Testimony.

The deposition *de bene esse* of C. A. Pooler was introduced and read to the jury.

C. A. POOLER, being duly sworn, deposeth and saith in answer to interrogatories as follows:

By COUNSEL FOR DEFENDANT:

Q. 1. Where do you reside, and what is your business?

Ans. In the city of Syracuse, N. Y.; I am director and secretary & general manager of the Eastern Building & Loan Association.

Q. 2. How long have you been secretary, general manager and a director?

102 A. Secretary since March 1st, 1897; general manager since May 1st, 1894, and director since March 1st, 1890.

Q. 3. Prior to May, 1894, were you connected with the defendant association in any other capacity than as director, and if so in what capacity and how long?

A. Yes; I was superintendent of agents from March 1st, 1890, until May 1st, 1894.

Q. 4. Did your duties as superintendent of agents include anything in relation to applications for shares in defendant's association, and if so, what?

A. Yes; all applications for membership for shares were under my charge and first approved by me before certificates were issued thereon.

Q. 5. You may state whether or not any application for membership and shares in defendant association, was made at any time by Welling & Bonnoitt, of Darlington, S. C., and if so, when, where, how and for how many shares?

A. Yes; on the 28th day of January, 1891, in the city of Syracuse, by a written application for fifty shares.

Q. 6. Have you said application, and if so will you produce it and make it a part of your deposition?

Plaintiff's and defendant's counsel agree that if there be any objection to attaching original documents to the *de bene esse* testimony, that said objection is waived, under the general reservation to object to any and all testimony upon the opening of the same upon the trial of the court.

A. I have; and so produce it; introduced and marked "Ex. A."

103 Q. 7. What, if anything, was done by the defendant association with said application on its receipt here at the home office?

A. It was accepted by the association, and under it five certificates of ten shares each, represented by Nos. 4967, 4968, 4969, 4970 and 4971 were issued and mailed to Welling & Bonnoitt, at Darlington, S. C., said certificates representing ten shares each of instalment stock of the par or maturity value of $1,000.00.

Q. 8. Are shares of the association issued or applications therefor accepted at any other place than at the home office of the defendant association in Syracuse, N. Y.?

A. No.

Q. 9. You may state whether or not any share has ever been issued by the defendant association, or any application has ever been accepted therefor at any other place than at its home office in Syracuse, N. Y.?

A. No.

Q. 11. You may state whether or not an advance or loan on said shares, or any of them, represented by said certificates Nos. 4967, 4968, 4969, 4970, 4971, was made by the defendant association to the plaintiffs, Welling & Bonnoitt, and if so for how much, when, where and how?

A. A loan was made upon fifty shares as represented by said certificates by the board of directors, on a written application signed and sworn to by Welling & Bonnoitt, in Darlington, S. C., on 26th day of April, 1891, same being granted by the board of directors 1891, at a regular meeting of the said board held in the city of Syracuse.

104 Q. 12. What was the amount of said advance or loan?

A. The maturity value of fifty shares, or $5,000.00.

Q. 13. What is the maturity value of each of the shares represented by the certificates you have referred to?

A. $100.00.

Q. 14. What does a share mature?

Plaintiff's counsel objects on the ground that the certificates of shares show, and the by-laws and the decisions of the State of New York show.

Defendant's counsel submits that the question is perfectly competent because under the law if the certificate contains a clause that the certificate will mature in seventy-eight months, or any other specified period, the courts as far as they have passed on that question have held that this is simply an estimated term of maturity; and that no association like a building and loan association has any power to fix the limit of time or guarantee any maturity period; and that therefore it is competent for the manager of the association to answer the question. The objection was sustained. Defendant excepts.

Q. 15. What do you mean by an advance to a member?

A. An advance or loan upon the shares before the same reach maturity.

Q. 16. Then is an advance sometimes called a loan?

A. Yes.

105 Q. 17. With reference to the shares of a member, what is the maximum amount that he or she can borrow from the association?

Ans. $100.00 per share, held by the member.

Q. 18. Have you the application for the loan or advance in question which you have already testified was made by the plaintiffs,

Welling & Bonnoitt, and granted by the board of directors of the defendant association? If so, produce it and make it a part of your deposition.

A. I have, and produce it; introduced and marked "Ex. L."

Q. 19. What papers were furnished by the plaintiffs, Welling & Bonnoitt, at the time the advance in question was made to them?

A. A mortgage dated May 1st, 1891, and recorded in the office of the R. M. C. of Darlington county, S. C., in Book No. 15, page 301; certain notes specified in the mortgage; an affidavit and application for advance; the certificates of stock assigned to the association as collateral to the loan; an abstract of title and policy of insurance.

Q. 20. Have you said mortgage, book of notes or stubs thereof, and affidavit and application for advance, and certificates of shares and assignments that you have just specified, and if so, will you produce them and make them a part of your deposition?

A. I have, and produce them. The same are introduced.

Q. 21. What are your duties as secretary?

A. To keep a record of all proceedings of stockholders, board of directors, executive committee; to keep all accounts and necessary books of the association, have in charge all papers and se-
106 curities belonging to the association and such other duties as are prescribed from time to time by the board of directors or executive committee.

Q. 26. On what terms, as regard interest and premiums, was the loan or advance in question made?

A. A gross premium of ten per cent. on the face of said loan, and a monthly premium and interest at five per cent. each, upon the face of said loan.

Q. 27. What do you mean by gross premium?

A. A sum of money which the borrower agrees to pay at the time the loan is consum-ated for the privilege or preference over other members in securing the advance or loan upon his stock previous to its maturity.

Q. 28. What was the gross premium and what was the monthly interest and premium in this case?

A. The gross premium was $500.00 and the monthly interest and premium was $41.70.

Q. 29. What was the monthly dues on fifty shares represented by the certificates in question?

A. $37.50.

Q. 30. What do the notes you have specified represent?

A. The amount of the monthly dues on the fifty shares in question, the monthly interest and premium on the loan which it was estimated at the time would mature the stock or said loan.

Q. 31. Assuming that an advance is made by the association to a member on his shares, for instance fifty shares, as in this case, by what method, assuming that the full maturity value of the
107 shares, to wit, $5,000.00, is advanced, can said advance or loan be repaid by the borrower?

A. By paying the full amount advanced.

Q. 32. Can it be repaid in any other way?

A. By maturing the shares pledged.

Q. 33. Can it be repaid in any other way, assuming that the shares have not matured?

A. By the borrower's paying the difference between book value of the certificate and the face of the loan.

Q. 34. Now you have stated that a portion of the sum specified in the notes you have mentioned in this case were dues on the fifty shares on the certificates in question; you may state why the notes embrace the particular number of monthly dues on these shares.

A. Because said number of payments was the amount which was estimated at the time would mature the stock.

Q. 35. How long with reference to the maturity of the certificates of shares in question, was the monthly interest and premium computed and included in said notes?

A. The interest and premium was computed until the shares were estimated to mature.

Q. 36. You have stated that the monthly dues on the shares in question was $37.50. How many of these monthly payments on said fifty shares have been paid to the defendant association?

A. From and including the month of February, 1891, to and including the month of July, 1897.

Q. 37. What payments of monthly interest and premium have been made?

108 A. From and including May, 1891, to and including July, 1897, also two payments of $41.70 each, in addition.

Q. 38. When a default is made in a monthly payment to the association, what if anything, accrues under its by-laws and articles by reason thereof?

A. A fine.

Q. 39. Shares advanced upon are denominated what?

A. Pledged shares.

Q. 40. On default in a monthly payment on pledged shares what fines accrue, if any?

A. Twenty cents per share, per month.

Q. 46. On the first day of August had the fifty shares in question matured or reached their par value of $100.00 per share?

A. No.

Q. 47. Had said shares of stock matured on the last Saturday of October, 1897, or at the time of the commencement of this action, or at any time since?

A. No.

Q. 48. What was the value of said shares on said last Saturday of October, 1897, and what is it at the present time?

A. $3,121.50.

Q. 49. Assuming that the withdrawal value of said shares is applied toward the payment of the loan in question, how much, if anything, was owing on said loan in October, say the last Saturday of October, 1897?

A. On the last Saturday of October, 1897, there was owing and unpaid on said loan, after applying the value of said shares, $1,878.50,

with interest, premium and fines from August 1, 1897, less
109 $83.40. There is now owing, figured up to November 1, 1898, $2,570.60. This computation is made as follows:

Debiting amount of loan		$5,000.00
Interest and premium from Aug. 1, 1897, to November 1, 1898		625.50
Fines		150.00
		$5,775.50
Crediting against this the withdrawal value of the fifty shares in question	$3,121.50	
Partial payment made Oct. 1-4, being two payments of $41.70 each	83.40	
Leaving balance owing Nov. 1, 1898		$2,570.60

Q. 52. How do you arrive at the withdrawal value of the shares in question?

A. By computing the dues paid thereon less the expense fund of ten cents per share per month, in accordance with sec. 1 of art. XI of the by-laws, and adding to that remainder its *pro rata* share of the earnings of the association.

Q. 53. Where can the by-laws of this association at the time the certificates of shares in question were issued and the advance thereon made, be found?

A. In a printed form on the back of said certificates.

Q. 54. Have you a certified copy of the articles of incorporation in force at that time, and if so, will you produce the same and make it a part of your deposition?

A. I have, and produce the same.

Introduced and marked "Ex. H."

110 Q. 55. Have the plaintiff- or either of them, or any one in their behalf, ever tendered to the defendant for execution, or requested the execution, of any satisfaction, piece or instrument for the discharge of the mortgage in this case?

A. No.

Q. 56. Are the plaintiffs, Welling & Bonnoitt, under the certificates in question, still stockholders of the defendant, and have they been since said shares were assigned to them?

A. Yes.

Q. 57. Are the plaintiffs, Welling & Bonnoitt, still the holders and owners of the fifty shares in question on the books of the defendant association, and have they been since said shares were assigned to them?

A. Yes.

Q. 58. In what book is the record of the stockholders of defendant association and their shareholdings kept?

A. In the book called the stock register.

Q. 59. I show you stock register, being a record of all certificates

from 1001 to 6900, and ask you if you can find on said book the record of certificates Nos. 4967, 4968, 4969, 4970, 4971, and, if so, you may state whether said record shows that Welling & Bonnoitt are now the holders and owners of said fifty shares, and have been since February 2, 1891?

A. The record so shows, to wit, the stock register, which is now in my hands and from which I now testify.

Q. 60. Have the dues paid on said fifty shares ever been applied by the defendant association on the loan in question?

A. No.

111 Q. 61. Have the plaintiffs, or either of them, or any one in their behalf, ever requested the defendant to apply the value of said shares on said loan?

A. No.

Q. 62. Before shares could be borrowed upon by a member how old did they have to be?

A. Three months old.

Q. 63. Thus three monthly payments of dues must of necessity have been paid before the loan was consummated, is that correct?

A. Yes.

Q. 64. How was account taken of these three monthly payments of dues on the book of notes given in connection with the loan?

A. The last three notes were made less by the amount of said three monthly payments due.

Cross-examination:

Q. 1. Does the defendant corporation admit the tender for the last three notes as alleged in the complaint, and also the tender of fifty cents for the discharge and satisfaction of said note?

A. It does.

Q. 2. The defendants having introduced evidence in various particulars of documentary character and otherwise, to which the plaintiff has reserved under stipulation the right to object at the trial of the cause, the plaintiff now call- for the production of certain documents for identification to be attached and to be introduced in testimony at the hearing by way of reply, provided the testimony of defendant be ruled as competent, and provided the plaintiff desires to introduce the same.

112 Q. 2. First, Mr. Pooler, I ask you to identify this eight-page leaflet. At what period was this sent out as a part of the literature of the defendant corporation?

A. It was one of the copies of the literature used at the time of the Welling & Bonnoitt loan. Paper filed as Identification Ex. 1.

Q. 3. The second paper that I ask you to identify I hand to you, what is it?

A. Copy of the articles of incorporation and by-laws of the association adopted May 14, 1894, and of resolutions passed by the stockholders March 15, 1897. Paper filed as Identification Ex. 2.

Q. 4. Under the statement above made calling for the identification of these exhibits, I ask you further to produce and identify a

copy of the annual report for each year from and including the year 1890 up to and including the year 1898.

A. We can produce only the reports from the third up to and including the eight. I cannot say that we had any reports up to that time. Produced and marked "Identifications Exhibits 3, 4, 5, 6, 7, 8."

Q. 5. Kindly produce for identification any other literature of the character "Identification Ex. 1," that was used by the corporation at the time of the Welling & Bonnoitt loan, and placed in the hands of their agents exemplifying the defendant's method of business and placed in the hands of their agents for the purpose of procuring business.

A. I know of no other literature used by the defendant corporation except the eight-page leaflet used for the identification marked "Identification 1."

113 Q. 6. Produce and identify under arrangement above, the report of special committee to a stockholder of affairs of corporation dated January 1st, 1898.

A. I produce it and identify it as "No. 9."

Q. 7. Since you have been connected with the defendant corporation has the association ever cancelled a mortgage similar in nature to the Welling & Bonnoitt mortgage, upon the payment of the seventy-eight notes secured by the mortgage?

A. I couldn't swear that we have.

Q. 8. Would you say, Mr. Pooler, that the association has not done so?

A. I would not so testify.

Q. 9. Mr. Pooler, I have seen in some report a case of the supreme court of the State of Pennsylvania, entitled "Bennet *vs.* Eastern;" was not the mortgage in that case cancelled on the payment of seventy-eight notes?

A. From my understanding of the statement, it was not.

Redirect by Mr. PIERCE:

Q. 10. If any mortgages have been cancelled by the defendant association on the payment of the seventy-eight notes, or a less sum, can you state the reason therefor, and if so, what is such reason or reasons?

A. By reason of insufficient security and the decision of the State court of North Carolina requiring a settlement on a six per cent. basis.

114 D. A. PIERCE, being duly sworn, deposes and saith as follows:

I reside in the city of Syracuse, N. Y., and am an attorney-at-law. I was admitted to practice in New York in 1884, and have been practicing law in said State ever since. I am the general attorney and one of the directors of the defendant association, and have been its general attorney since April, 1890. I am familiar with the laws of the State of New York in relation to building and loan associations and with the law generally applicable to such associations. I

have made said laws a special study on account of my connection as general attorney with defendant association, my duties as such having taken practically all of my time during a number of years past.

The defendant is a corporation, and was incorporated in March, 1890, under chapter 122 of the Laws of 1851 of the State of New York as amended by chapter 564 of the Laws of 1875 of said State. I have an exemplified copy of said laws and hereby produce the same. Introduced and marked "Ex. I."

There has been no change in said law of 1851 as amended by said law of 1875, so far as the fundamental acts and operations of associations incorporated thereunder are concerned.

I am familiar with the defendant's articles of incorporation and by-laws and all provisions thereof.

Among other things my duties as attorney of defendant
115 association required me to take charge, and I have taken charge and supervision of the drafting, execution, delivery, and perfecting of papers upon loans or advances made by the association, the perfecting and approving of title to property offered as security, the furnishing by the borrower of insurance and other papers required on the loan, and the final closing of the same, after the application therefor had been approved and granted by the board of directors of defendant association at its home office in Syracuse, N. Y.

I had charge of the closing of the loan in this Welling & Bonnoitt case. In that connection the following steps were taken: After the application for the loan in question had been granted by the board of directors of the association here, I first examined the abstract of title to the premises offered as security, and upon such examination and approval I caused the mortgage, notes, affidavits, and application for advance to be prepared here and forwarded the same to Darlington, with the abstract, for execution and the recording of the mortgage and the continuation and certification of the abstract down to and including the date of recording said mortgage. After the execution of said papers the same, together with the certificates of shares, in its present form, including all indorsements, were returned here and approved by me, whereupon the monies upon the loan were paid to Welling & Bonnoitt, the total amount actually paid them in cash being the sum of $4,500.00, the $500.00 gross premium bid and agreed to be paid by them as preference for the loan, being paid by them by deducting the same from the total amount
116 loaned, to wit, $5,000.00. These payments were made by checks of the association payable to the order of the plaintiffs Welling & Bonnoitt, drawn on its depository, the Trust & Deposit Company of Onondaga, in the city of Syracuse, N. Y. The monies were desired for the purpose of enabling Welling & Bonnoitt to build a building upon the premises embraced in said mortgage, and the same were forwarded after the receipt and approval by me of the papers above noted, from time to time and as the building progressed, and were paid over in full when it had been shown by them that such building had been entirely completed. Policy of insurance was furnished by them after the return of the notes and other

papers I have above indicated and when the building had sufficiently progressed for that purpose.

After the recording of the mortgage the same was forwarded here, and all of said papers have since been, and now are, in the possession of the defendant association, which is the holder and owner thereof.

The monthly payments specified in the mortgage embrace the monthly dues on the fifty shares of stock represented by certificates Nos. 4967, 4968, 4969, 4970, and 4971 (which I have already noted was forwarded with other papers and accepted by me prior to the final turning over of the monies upon the loan), and pledged as collateral and the monthly interest and premium on the above advance, which were estimated to accrue and become payable until said shares of stock should mature; that is to say, until they should reach the value of $100.00 per share from the payment of monthly dues thereon, together with the earnings of the association, to which they were entitled.

117 The advance or loan in question, the interest and premium thereon and the dues on said shares and fines thereon, were all payable at the home office of the defendant association in Syracuse, N. Y., by virtue of the provisions of the notes, mortgage, certificates of shares and section 3 of article XIV of the by-laws of defendant association, which said by-laws are printed upon the back of the certificates in question.

The receipts for $1,000.00 signed by Welling & Bonnoitt on the back of the certificates, was the method pursued at the time the loan in question was closed, of pledging the fifty shares advanced or borrowed upon as collateral to the loan in accordance to said section 3, article XIV of the by-laws.

The relation which the advance or loan in question bears to the fifty shares advanced upon, under the laws of the State of New York and the statute under which the defendant association is incorporated and its articles of incorporation and by-laws, is that the shares are simply collateral to the advance, and until their maturity are separate and distinct from the loan or advance. The borrower's relation to the association after the consummation of the advance or loan, is twofold. As to the shares borrowed or advanced upon, he or she is an investor; on the other hand, as a borrower, he or she is bound to make the payments on the advance by way of interest and premium, and the monthly dues on the shares until the shares are matured, at which time the application of the maturity value of the shares pays the advance or loan; one account offsetting and paying the other and thus discharging the mutual obliga-

118 tions existing. In other words, when the shares have matured the association is owing the borrower the maturity value of his shares advanced upon, in this case $5,000.00, and the borrower, on the other hand, is owing the association the amount of the advance, also $5,000.00, and thus as I have stated the mutual obligations of each becomes satisfied and discharged.

Under the statute under which the defendant corporation is incorporated, and the defendant's articles of incorporation and by-

laws, and the decisions of the courts of the State of New York, the defendant association is not bound to mature its stock within the time specified, if any, on the face of the certificate, say seventy-eight months, or any other fixed period, regardless of the actual value of said stock at the expiration of said fixed period, said value depending, of course, upon the payment of dues made thereon and their *pro rata* share of the earnings, that any period of maturity fixed or indicated in the certificates of stock in any way, is simply an estimated period, and that the association is not required to pay the face value thereof at the expiration of any such period unless the amount paid in thereon, together with the earnings apportioned thereto shall equal the par value of the shares. I base my opinion on the statute under which defendant is incorporated, its articles of incorporation and by-laws, and the decision of the supreme court of the State of New York in the case of—

O'Malley *vs.* People's Building, Loan & Savings Asso'n, 92 Hun., 572,

and similar decisions of other States under like statutes.

119 If the shares had not in fact matured at the expiration of seventy-eight months, the borrowing member is affected in this way: As I have testified, the borrower's relation to the association is twofold. He is not only a borrower but also an investor, who has received by the advance or loan the full maturity value of his shares. He is therefore bound to carry these shares until they have actually matured, notwithstanding that such time may extend beyond the estimated period, and under his contract the interest and premium must be paid until such time as the shares mature and cancel the loan. Furthermore, this position is sustained by the provision in section 7 of chapter 122 of the Laws of 1851 as amended, which I have already referred to, and which reads: "No holder of redeemed shares shall claim to be exempt from making the monthly or other stated payments provided in the articles of association, upon the ground that by reason of losses or otherwise, the payments on such shares shall amount to more than the amount originally advanced with legal interest thereon."

The computation for the repayment of the Bennett loan for which Bennett sought to recover on the ground of usury, the case being entitled and reported as—

Bennett *vs.* Eastern B. & L. Asso'n, 45 At. Rep., 684, was made regardless of the notes executed and unpaid on the advance, and in the same manner as that testified to by Mr. Pooler in this case.

Defendant introduces chap. 122 of the Laws of 1851 of the State of New York and chap. 564 of the Laws of 1875 of the State of New York amendatory of the first-named act. Marked Exhibit T.

120 Introduces vol. N. Y. Sup. Ct. Reports—the case of John O'Malley *vs.* The People's Building Loan and Savings Association, 92 Hun., page 572. Marked Ex. U.

Introduces case of Englehardt *vs.* Fifth Ward Loan Association, 148 N. Y. Court of Appeals Reps., page 281. Marked Ex. V.

Introduces case decided by court of appeals, State of New York,

entitled: The People of the State of New York, respondent, *vs.* John Lowe and others, appellants, decided in 1889, reported in vol. 117, N. Y. Repts., page 175. Marked Ex. W.

Introduces case of Concordia Savings and Aid Association, respondent, *vs.* Elizabeth A. S. Read, appellant, decided 16th October, 1883, by court of appeals, State of New York, reported 93 N. Y. Repts., page 474. Marked Ex. X.

Introduces the application for advance in this case, Exhibit O, and affidavit of title, etc., the application for advance dated prior to April—the application for loan; and the affidavit of the mortgagor is dated at a time prior to the application for a loan.

EXHIBIT S.

Application for an Advance.

To the board of directors of the Eastern Building and Loan Association of Syracuse, N. Y.

GENTLEMEN: At a regular meeting of your board, held April
121 27, 1891, having obtained the preference for an advance on fifty shares of Nos. 4967 to 4971 of your association, at a premium of ten per cent., I now respectfully request the advance be granted. I hereby agree to comply with the charter and by-laws of your association and all requirements defined by your committee of the board of directors.

LAWRENCE S. WELLING,
MARION BONNOITT, *Applicants.*

Witness:
E. O. WOODS.

STATE OF SOUTH CAROLINA, } ss:
County of Darlington, Town of Darlington, }

Lawrence S. Welling and Marion Bonnoitt, of said town, being duly sworn depose and say:

That the lands and premises described in the mortgage executed by deponents to the Eastern Building and Loan Association, of Syracuse, N. Y., under date of May 1st, 1891, and being 45½ x 146 ft. on south side of public square, said town and right of way more particularly described in said mortgage, are owned by deponents in fee-simple and free and clear from all mortgages (except the mortgage aforesaid), taxes, assessments, judgments, clouds, liens and incumbrances of every kind and description whatever, including obligations for purchase-money of the same, and that the title of deponents to the same is perfect and indefeasible; that deponents are now and have been since May 24, 1891, in the quiet and undisputed possession of said premises, and that deponents and
122 those under and through whom title is claimed, and has been derived, have actually and exclusively occupied the same under a claim of title for more than twenty years last past; that said mortgage premises are the same premises referred to in the

application for loan and appraised therefore by the appraising committee of said associ-tion at Darlington, S. C.; that no mortgage, lien or incumbrance of any kind has been executed, or suffered or permitted to be executed, by deponents upon said premises prior to the aforesaid mortgage to said association within the last ninety days, and that said mortgage is the only incumbrance now in force and a lien upon said premises. And deponents further depose and say that they are not on any person's bond as surety for the payment of any sum of money, or upon any official bond of any kind either as principal or surety, nor are there any judgments or decrees of any United States court outstanding against deponents or any former owner of said premises and a lien thereon; that deponents and Agnes W. Welling and Annie G. Bonnoitt, their respective wives, are citizens of the United States and are of the age of twenty-one years and upwards; and that the statements and representations herein are made for the purpose of procuring a loan from said association, for the security of which the aforesaid mortgage is given, and for no other purpose whatever. Deponents further say that their aforesaid respective wives have duly renounced their respective dower rights in said premises under said mortgage to said associ-tion.

LAWRENCE S. WELLING.
MARION BONNOITT.

Subscribed and sworn to before me this 6th day of June, 1891.

E. O. WOODS,
[L. S.] *Notary Public, S. C.*

123 EXHIBIT T.

UNITED STATES OF AMERICA, }
State of New York. }

By John Palmer, secretary of state and custodian of the great seal thereof.

It is hereby certified, that John Palmer was, on the day of the date of the annexed certificate and attestation, secretary of state of the State of New York, and duly authorized to make the same; that such secretary of state is the proper officer to make such certificate and attestation and that the same are in due form; that the seal affixed to said certificate is the seal of office of the secretary of state of the State of New York; that the signature thereto of the said secretary of state is in his own proper handwriting, and is genuine; and, further, that the secretary of state is the custodian of the original law, so certified and attested, and custodian of the great seal of said State, hereunto affixed, and that full faith and credit may and ought to be given to his official acts.

[L. S.] In testimony whereof, the great seal of the State is hereunto affixed.

Witness my hand at the city of Albany, the 25th day of January,

in the year of our Lord one thousand eight hundred and ninety-eight.

JNO. PALMER,
Secretary of State.

124 CHAP. 122.

An act for the incorporation of building, mutual loan, and accumulating fund associations.

Passed April 10, 1851.

The People of the State of New York, represented in senate and assembly, do enact as follows:

1. Any number of persons, not less than nine, may associate and form an incorporated company for the purpose of accumulating a fund for the purpose of real estate, the erection of buildings, or the making of other improvements on lands, or to pay off incumbrances thereon; or to aid its members in acquiring real estate, making improvements thereon and removing incumbrances therefrom, and for the further purpose of accumulating a fund to be returned to its members, who do not obtain advances as above mentioned, when the funds of such association shall amount to a certain sum per share, to be specified in the articles of association.

2. Such persons shall severally subscribed articles of association, in which shall be set forth the name of the corporation, the time of its regular meetings and how special meetings may be called, and what shall constitute a quorum to transact business at meetings; the qualification of members and how constituted; what officers, trustees and attorney there shall be, and how and when chosen, and their duties, and how removed or suspended from office; the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, and fees to be paid on the transfer of shares;
125 the fines and penalties for non-payment of dues or fees, or other violation of the articles of association; the manner of redemption of shares by advances made thereon, the mortgaged security to be taken on such advances, and how the same may be redeemed or changed; the manner of the transfer or withdrawal of shares; the manner of investing funds not required for advances on shares; the qualifications of voters at the meetings, and the mode of voting; the ultimate amount to be paid to the owners of unredeemed shares; the manner of altering or amending the articles of association and such other provisions as shall be necessary for the convenient and effective transaction of the business thereof; provided that the same shall not in any respect contravene the constitution or laws of this State.

3. A true copy of such articles signed by the officers of the association, together with a statement showing when the association was organized, and the place of the transaction of its business, and the name of the officers and trustees at the time of the making such statement, which shall be verified by oath or affirmation before any officer authorized to take affidavits, to be used in courts of justice

shall be filed in the office of the clerk of the county in which such association shall transact its business; and thereupon the persons who have subscribed the articles of association as aforesaid, and such other persons as shall become members of such association and their successors shall be a body corporate, by the name specified in such articles of association, and shall possess the powers and privileges, and be subject to the provisions of title third of chapter
126 eighteen of the first part of the Revised Statutes, so far as those provisions are consistent with the provisions of this act and they shall by their corporate name, be capable in law of purchasing, holding and conveying any real and personal estate whatever, which may be necessary to enable the said company to carry on their operation named in such certificate.

4. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times, and in such payments or instalments, as the articles of association shall prescribe, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest to the place, where the business of the company shall be carried on as aforesaid.

5. All corporations formed under this act shall have power to borrow money for temporary purposes not inconsistent with the objects of their organization; but no loan for such purposes shall have a longer duration than two years, nor shall such indebtedness exceed at any one time one-fourth of the aggregate amount of the shares and parts of shares and the income thereof, actually paid in and received.

6. Parents and guardians may take and hold shares in such association in behalf, and for the use of their minor children or wards, provided the cost of such shares be defrayed from the personal
127 earnings of such minor children or wards, or by gifts from persons other than their male parents; married women may take and hold shares in such associations provided the cost of such shares be defrayed from their personal earnings, the personal earnings of their children voluntarily bestowed for this purpose, or from property bequeathed or given to them by persons other than their husbands.

7. Every such corporation shall terminate except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon; or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association and not sooner, but no dividend of principal or of profits shall be made until such termination; nor until all the debts of the association shall have been paid or otherwise sufficiently provided for. No holder of redeemed shares shall claim to be exempt from making the monthly payments provided in the articles of association upon the ground that by reason of losses, or otherwise, the association has continued longer than was

originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon; nor shall the imposition of fines for non-payment of dues or fees, or other violation of the articles of association, nor shall the making of any monthly payment required by the articles of association, or of any premium for loans made to members be deemed to be a violation of the provisions of any statute against usury.

8. Any existing association, formed for the purposes men-
128 tioned in the first section of this act, may, on the vote of a majority of the voting shares, at any regular meeting, after the passage of this act, become entitled to the benefit of this act, on complying with the second and third sections thereof, unless the second section has heretofore been complied with; in which case it shall be necessary to comply only with the said third section.

9. No officer, trustee, attorney, agent or servant of any association hereby incorporated, shall use or dispose of any part of the funds of such association, or assign, transfer, cancel, deliver up or acknowledge satisfaction of any bond, mortgage or other written instrument belonging to such association, unless duly authorized or be guilty of any fraud in the performance of his duties; and every person guilty of a violation of this section shall be liable civilly to the party injured, to the extent of the damage thereby incurred, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

10. Each association formed under the provisions of this act, shall, at the close of its first year's operations, and annually at the same period in each year thereafter publish in at least two newspapers published in the place where their business may be located, or if no newspaper shall be published in such place, then in any two newspapers published nearest such place, a concise statement verified on the oaths of its president and secretary, showing the actual financial condition of the association, and the amount of its property and liabilities specifying the same particularly.

129 11. All the shareholders of any association formed under this act, shall be individually liable to the creditors of said association to an amount equal to the amount of stock held by them respectively, for all debts contracted by such association. The directors or other officers of every association formed under this act, shall be personally liable for any fraudulent use, disposition or investment of any monies or property belonging to such association, or for any loss which shall be incurred by any investments made by such directors or other officers other than such as are mentioned in and authorized by this act; but no director or other officer of any such association, shall be liable as aforesaid, except he authorized, sanctioned, approved, or made such fraudulent use, disposition or investment as aforesaid.

12. No person holding stock in any such company, or executor, administrator, guardian or trustee; and no person holding such stock as collateral security, shall be personally subject to any

liability as stockholder of such company, but the person pledging such stock, shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent as the testator or intestate, or the ward, or person interested in such trust fund would have been if he had been living and competent to act, and hold the same stock in his own name.

13. Every such executor, administrator, guardian or trustee, shall represent the share of stock in his hands at all meetings of
130 the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at all such meetings and may vote accordingly as a stockholder.

14. In case it shall happen at any time that an election of officers shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the said by-laws; and all acts of trustees shall be valid and binding as against such company, until their successors shall be elected.

15. The legislature may at any time alter, amend or repeal this act, or may annul or repeal any incorporation formed or created under this act, but such amendment or repeal shall not, nor shall the dissolution of any such company take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

16. Any company which may be formed under this act may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount
131 of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital.

17. Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and a vote of at least two-thirds of all the shares of stock

shall be necessary to an increase or diminution of the amount of its capital stock.

18. If at any time and place specified in the notice provided for in the preceding section of this act, stockholders shall appear in person or by proxy, in numbers representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy; and if on canvassing the votes, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, a certificate of the proceeding, showing a compliance with the pro-
132 visions of this act, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary; and such certificate shall be acknowledged by the chairman, and filed as required by the first section of this act, and when so filed, the capital stock of such corporation, shall be increased or diminished to the amount specified in such certificate.

19. The shares held by the members of all associations incorporated under the provisions of this act, shall be exempt from sale on execution for debt, to an extent not exceeding six hundred dollars in such shares, at their par value.

20. No loan made by any such association to any of its members, may exceed in amount the par value of the capital stock for which such member may have subscribed.

21. The copy of any certificate of incorporation, filed in pursuance of this act, certified by the county clerk or his deputy, to be a true copy, and of the whole of such certificate, shall be received in all courts and places, as presumptive legal evidence of the facts therein stated.

22. This act shall take effect immediately.

CHAP. 564.

An act to amend chapter one hundred and twenty-two of the
133 Laws of Eighteen hundred and fifty-one, entitled "An act for the incorporation of building, mutual, loan, and accumulating fund associations."

Passed June 9, 1875.

The People of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The seventh section of chapter one hundred and twenty-two of the Laws of Eighteen hundred and fifty-one, entitled "An act for the incorporation of building, mutual, loan and accumulating fund associations," is hereby amended so as to read as follows:

7. The trustees of any association formed under the provisions of this act, may, from time to time, declare dividends from the earn-

ings of the association, payable in such manner as may be provided in the articles of association, but no dividend shall be declared, except from the earnings of the association, and if the trustees of any such association shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable to the extent of the dividend so declared and paid, for all the debts of the association then existing or that shall be thereafter contracted while they shall respectively continue in office; provided, that if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of his objection in writing with the clerk of the company, and with the clerk of the county, he shall be exempt from the said liability. But no trustee who
134 shall be present at any meeting when such dividend is declared, shall be exempt from such liability, unless he shall then and there object to the declaration or payment of such dividend, and shall also procure his objection to be noted in the book of minutes of such association. No holder of redeemed shares shall claim to be exempt from making the monthly or other stated payments provided in the articles of association, upon the ground that, by reason of losses or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon; nor shall the imposition of fines, for the non-payment of dues or fees, or other violation of the articles of association, nor shall the making of any monthly payment required by the articles of association or of any premium for loans made to members be deemed a violation of the provisions of any statute against usury.

2. Every corporation organized under the provisions of said act, and every corporation heretofore organized under the laws of this State for purposes similar to those provided for in said act, shall annually make a full report in writing of the affairs and condition of such corporation, on the first day of January in each year, to the superintendent of the banking department in such form, and by such officers of the said corporation, as the said superintendent may designate, which report shall be in place of any report which any such corporation may now be required to make to the supreme court, the comptroller, or otherwise. Such report shall be
135 verified by the oath or affirmation of the officers making such report; and any willful false swearing in regard to such report shall be deemed perjury, and be subject to the prosecutions and punishments prescribed by law for that offense. Every such report shall be made within twenty days after the day to which it relates, and shall be in such form, and contain such statements, returns and information, as to the affairs, business, condition, obligations and resources of such corporation, as the said superintendent may, from time to time, prescribe and require. And the said superintendent may, if he be of opinion that it is desirable, require that a like report, either wholly or in part, as to the particulars afore-

said, be made to him at any time, by any such corporation aforesaid, within such period as he may designate.

3. It shall be the duty of the said superintendent, once in two years, either personally or by some competent person or persons, to be appointed by him, to visit and examine every corporation required by this act, to report as aforesaid. The said superintendent and every such examiner shall have power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person, for the purpose of such examination, by summons, subpœna or attachment, in the manner now authorized in respect to the attendance of persons as witnesses in the courts of record of this State; and all books and papers which it may be deemed necessary to examine by the superintendent, or the examiner or examiners so appointed, shall be produced and their production
136 may be compelled in the like manner. The expense of every such examination shall be paid by the corporation examined to such amount the superintendent shall determine. Whenever such examination shall be made by the superintendent personally, or by one or more of the regular clerks in his department, no charge shall be made on such examination but for necessary traveling and other actual expenses.

4. On every such examination inquiry shall be made as to the condition and resources of the corporation generally, the mode of conducting and managing its affairs, the action of its directors or trustees, the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and whether the requirements of its charter and of law have been complied with in the administration of its affairs.

5. If it shall appear to the said superintendent from the report of any such corporation, or from any examination made by him, or from the report of any examination made to him, that any corporation has committed a violation of its charter or of law, or is conducting business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal of office addressed to such corporation, direct the discontinuance of such illegal or unsafe practices and conformity with the requirements of its charter and of law, and with safety and security in its transactions, and whenever any corporation shall refuse or neglect to make such report as is hereinbefore required, or to comply with any such order as aforesaid; or whenever it shall appear to the superintendent that
137 it is unsafe or inexpedient for any corporation to continue to transact business, he shall communicate the facts to the attorney general, who shall thereupon be authorized to institute such proceedings against any such corporations as are now, or may hereafter be provided for by law, in the case of insolvent corporations, or such other proceedings as the nature of the case may require.

6. If any such corporation shall fail to furnish to the superintendent of the banking department any report or statement required by this act at the time so required it shall forfeit the sum of ten dollars per day for every day such report or statement shall be so

delayed or withheld, and the said superintendent may maintain an action in his name of office to recover such penalty, and when collected, the same shall be paid into the treasury of the State and be applied to the expenses of the bank department.

7. This act shall take effect immediately.

104–6–17–'97–200.

STATE OF NEW YORK, *Office of the Secretary of State,* } ss:

I have compared the preceding — with the original laws on file in this office, and do hereby certify that the same are correct transcripts therefrom, and the whole of said original laws.

Given under my hand and the seal of office of the secretary of state, at the city of Albany, this 25th day of January in the year one thousand eight hundred and ninety-eight.

[L. S.]

JNO. PALMER,
Secretary of State.

138 EXHIBIT U.

O'Malley *vs.* People's Building, Loan and Savings Association. Reported in 92 Hun. (N. Y.), 572.

LEWIS, *J.:*

"This action was brought to recover the sum of $500, claimed to be due upon a certificate of five shares of stock issued by the defendant to the plaintiff, of the par value of $100 a share. The principal question presented is whether the plaintiff is entitled to recover the par value of the shares, or whether his recovery shall be limited to the sum of $371, that being the amount, as claimed by the defendant, which the shares had earned at the time this action was commenced.

"The defendant is a building, loan and savings association. It was organized in the month of December, 1887, under chapter 122 of the Laws of 1851, entitled 'An act for the incorporation of building, mutual loan and accumulating fund associations,' and the acts amendatory thereof and supplemental thereto. Its principal office is in the village of Geneva, Ontario county, N. Y. Its capital stock is $5,000,000, represented by 50,000 shares of the par value of $100 a share. It is provided by section 1 of the act of 1851 that any number of persons, not less than nine, may associate in forming an incorporated company for the purpose of accumulating a fund for aiding its members in acquiring real estate, making improvements thereon, and removing incumbrances therefrom, and for the further purpose of accumulating a fund to be returned
139 to its members who do not obtain advances upon their shares of stock when the funds of the association shall amount to a certain sum per share, to be specified in the articles of association. The act provides for the filing of articles of association, which are to be subscribed by the members, in which shall be stated, among other things, the amount of the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption

fee on shares on which advances shall be made, the fines and penalties for non-payment of dues, fees, or other violations of the articles of association, the manner of redemption of shares by advances made thereon, the mortgage security to be taken on such advances, how same may be redeemed or changed, and the ultimate amount to be paid to the owners of unredeemed shares. It was further provided by said act that corporations formed under it shall have the power to borrow money for temporary purposes, not inconsistent with the objects of their organization, but no loan for such purposes shall have a longer duration than two years.

"Articles of association were duly subscribed and filed by the defendant. It is provided therein that persons, on becoming members of the association, shall duly subscribe a written application for shares desired to be purchased, and pay an admission fee of $1 on each share, and thereafter pay one dollar a month on each share, and in addition thereto the sum of 25 cents every three months. The scheme and plan of the association is, briefly, to issue its shares of stock to persons desiring to purchase the same, and with
140 the moneys paid by the shareholders, and the fines and penalties which may be imposed upon the members, to accumulate a fund which, after paying the expenses of the association, is to be loaned or advanced to the holders of the shares of stock who may make application therefor, to the amount of the par value of the stock. The moneys advanced are to be secured by the bond of the applicant, and by a mortgage upon unincumbered real estate, conditioned to pay on the amount borrowed annual interest of 5 per cent., and in addition thereto a premium of 5 per cent. per annum, the interest and premium to be paid in weekly installments, until the mortgage matures. The certificates of stock upon which advances are not made may be held by the owner as an investment simply. The holder thereof is entitled to the dividends which may be made thereon from time to time. It is provided by the defendant's by-laws that any member, in lieu of paying the monthly and quarterly installments, may, at the time of making application, pay $60 a share, and receive a paid-up certificate with a maturity face value of $100. The holders of these paid-up certificates are not liable for any admission fee, fines, or to the cancellation of their stock; and they may, upon the surrender thereof, withdraw the amount they have paid on the same at any time after three years from the date of issue thereof, and before maturity, together with annual interest of 6 per cent. The by-laws also provide that the directors may, in lieu of the admission and other fees, deduct from paid-up certificates 2 per cent. per annum on the maturity
141 face value of the stock for the estimated period of five years, and place the same in the expense fund, to defray the expenses of the association.

"The purpose of the law, it will be seen, is to provide an opportunity for the people of limited means to invest a portion of their income, making payments in small sums from time to time, and thereby secure to themselves homes, which they might not be able to do if they were required to make their payments in large amounts.

If the affairs of such associations are conducted in conformity to the law and their articles of association and by-laws, the investments of the shareholders are reasonably safe; but if, on the contrary, they are improvidently and carelessly managed, they are quite sure to fail in their purpose.

"There was issued to the plaintiff, upon his written application therefor, on the 2d day of December, 1889, a certificate for five shares of the defendant's stock. It was provided in the certificate that the plaintiff was constituted the holder of five shares of stock of the defendant, of $100 each, 'in consideration of the entrance fee, together with agreements and full compliance with the terms and conditions printed upon the back of this certificate, and the articles of association and by-laws adopted by *said* the said association, all of which are hereby referred to and made a part of this contract.' The certificate further stated that the defendant agreed to pay said shareholder, or his heirs, executors, administrators or assigns, the sum of $100 for each of said shares at the end of five years from the date thereof, or, in case of his death before the expiration of said
142 term, then the sum of money equal to the amount of monthly instalments paid on the shares, together with all dividends which have accrued thereon, 'all of which are payable in the manner and upon the conditions set forth in the articles of association and by-laws, and terms and conditions printed on the back of this certificate.' The plaintiff in all respects complied with the rules and regulations of the defendant, and upon the expiration of the five years from the date of the certificate he presented it to the defendant, and demanded payment for its par value. The defendant declined to pay the $500, for the alleged reason that the shares had not then earned that amount, but stated that the amount they had earned was $371, which the defendant offered to pay to the plaintiff upon the surrender by him of the certificate. The plaintiff declined to accept the amount so offered and thereupon brought this action. The trial court construed the certificate to be an absolute, unconditional promise to pay the $500 upon the expiration of five years from its date, and directed a judgment accordingly.

"The main question presented by the appeal, as stated, is whether the plaintiff is entitled to recover the face value of the certificate or, shall his recovery be limited to the amount the shares have earned? If the language of the certificate alone is to be considered, there can be but little doubt that the decision of the trial court was right. In construing this contract, the defendant's articles of association and by-laws must be considered as part of the contract, and given their proper effect. Gibbs *vs.* Bank, 83 Hun, 92; 31 N. Y. Supp. 406; *In re* Commissioners of Washington Park, 52 N. Y., 131.
143 It is reasonably certain that if the construction contended for by the plaintiff is to prevail, it will thwart the scheme and purpose of the association, and probably bankrupt it. The plan of the organization contemplates that the holders of certificates shall be entitled to share equally in its earnings. It is a mutual association. It cannot with any propriety be claimed that, under the defendant's articles and by-laws, it was contemplated that

there should be any distinction in the time for the maturity of the shares of stock. The officers of the defendant, however, assumed to issue to the plaintiff a certificate which, upon its face, states that the company, at the end of five years, will pay to the holder thereof the sum of $100 a share. Plaintiff's payments were $13 a year on each share of his stock, amounting, upon his five shares, to $65 a year, and in five years to the sum of $325. Interest computed at 6 per cent. per annum on the payments from the time they were respectively made until the end of the five years, amounts to between $45 and $46, which, added to the payments, makes $371, the amount which the defendant claimed the shares had earned, and which it offered to pay. If the plaintiff is entitled to recover the $500, his investment earned him from 22 to 23 per cent. per annum; an amount of interest which, if paid upon all certificates issued by the defendant, would in probability bankrupt the association, a result which, it would seem, must have been apparent to the parties when the transaction took place.

"The plaintiff was presumably aware of the general plan
144 of the association, for it was stated in his certificate that the articles of association and the by-laws were to form a part of the contract, and, as stated, the general plan of the association contemplated that all the shareholders should be entitled to a *pro rata* share of its earnings. He must have been aware that it was not at all probable that the earnings of the association would be sufficient to pay the rate of interest which his construction of the contract calls for. It was not possible to know, at the time the certificate was issued to the plaintiff, when it would mature by the accumulation of dividends, for that necessarily depended upon the earnings of the association, and that could not be determined in advance. The dues, fees and penalties paid by the shareholders, with the interest and premiums paid by the borrowing members, make up and constitute the income of the association, and provide the fund from which the dividends upon the stock are paid. People *vs.* Preston, 140 N. Y., 549; 35 N. E., 979. The dividends can only be paid out of the earnings. Section 7, c. 122, Laws 1851, as amended by chapter 564, Laws 1875. If the five-year clause be construed as an estimated time for the maturity of the certificate, then the certificate conforms to the general scheme of the organization and to the statutes. The authority to issue a certificate with a fixed period of maturity is not expressly given, either by the statute or by the articles of association or by-laws of the society. We are of the opinion that the defendant did not possess the power or authority to issue a certificate containing a fixed maturity period, and that the clause in the certificate in question should be construed as an estimated
145 period of maturity. The amount actually earned by the certificate at the time it was presented by the plaintiff for payment was only $371.

"The judgment should be reversed, and a new trial granted, costs to abide the event, unless the plaintiff, within 20 days, stipulates to reduce the recovery of damages to $371, and interest thereon from December 2, 1894, and, in that event, the judgment be so modified,

and, as modified, affirmed, without costs of this appeal to either party.

"A like disposition should be made of the case of Church *vs.* Same Defendant, *infra*.

"All concur."

EXHIBIT V.

In the case of Englehardt *vs.* Fifth Ward Dime Savings and Loan Association, reported in 148 N. Y., at page 281, it was held that the articles of association which showed the scheme of the organization and defined the obligation of the association, and the rights of members, are binding upon each member thereof. They establish the relation between the association and the stockholders, and constitute a contract between them.

146

EXHIBIT W.

PEOPLE
v.
LOWE ET AL.

Reported in 117 N. Y., page 175.

(Court of Appeals of New York, Nov. 26, 1889.)

The Second Union Co-operative Land & Building Society, in January, 1868, was incorporated under "An act for the incorporation of building, mutual loan, and accumulating fund societies," passed April 10, 1851. Under section 1 of that act, any number of persons, not less than nine, can associate and form an incorporated company for the purpose of accumulating a fund for the purchase of real estate, the erection of buildings or the making of other improvements upon lands, or to pay off incumbrances thereon, or to aid its members in acquiring real estate, making improvements thereon, and removing incumbrances therefrom; and for the further purpose of accumulating a fund to be returned to its members who do not obtain advances, when the funds of such association shall amount to a certain sum per share, to be specified in the articles of association. Section 2 provides that such persons shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, the fees to be paid on the transfer of shares, the fines and penalties for nonpayment of dues or fees or other violation of the articles of association, the manner of redemption of shares by advances made thereon,
147 the mortgage security to be taken on such advances, and how the same may be redeemed or changed, the manner of investing funds not required for advances on shares, and other matters. Section 7 provides that every such corporation shall terminate, except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon, or when-

ever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association, and no sooner. Section 20 provides that no loan made by any such association to any of its members shall exceed in amount the par value of the capital stock for which such member may have subscribed.

The articles of association adopted by the society provide, in article 2, that the object of the society is, by co-operation, to enable its members to become their own landlords, by providing funds for each member to purchase real estate, and to make improvements thereon. Article 14 provides that all persons, on becoming members, shall pay an entrance fee of 50 cents for the first two shares, and 25 cents for each additional share; and that the subscription shall be 50 cents per week on every share of $1,000 held by any member. Article 16 provides that appropriations shall be disposed of by alternate ballot and open sale; that about two weeks before the money at bank is expected to amount to $1,000 an appropriation by ballot shall take place; that the member obtaining it shall receive $1,000 on each share held by him, to be paid as soon as the money at the bank amounts to that sum; that one other right of appropriation shall be sold the same evening, the amount to
148 be sold to be fixed at $1,000; that the purchaser shall be entitled to the full amount of shares held by him at the same ratio; that it shall be sold to the highest bidder, the payment for the same, with no more than $250 premium for each $1,000 share, being extended over a space of ten years, and, should more than $250 premium be given per thousand, the amount over such sum shall be paid in cash; that the payment of all such appropriations being extended over a space of ten years shall go towards making up future appropriations, that a member having obtained an appropriation may select real estate, upon which he shall give a mortgage for the repayment of the sum advanced, such advance to be repaid at the rate of 10 per cent. per annum, in monthly installments; that when the whole advance has been repaid he shall continue to pay his weekly subscriptions until he has paid the whole amount of subscriptions due. Article 24 provides that, when each of the members has obtained his appropriation, then, the object of the society having been accomplished, it shall cease to exist.

The shares of the corporation were $1,000 each and many persons became members thereof. The corporation had no actual capital, except the money accumulated from the weekly dues, fines and premiums on loans; and from this appropriations were made from time to time by ballot and sale, as provided in the articles, secured by mortgages. Prior to the 23d day of October, 1884, nearly all the members had taken appropriations, to wit, $1,000 for each share held by them, and upon such appropriations they had made the payments required at the rate of 10 per cent. annually, and had also
149 paid their weekly dues, and on the day last named there were 40 members still remaining in the society, 34 debtor members and 6 creditor members. On that day, at a special meeting regularly called, the following preamble and resolutions were adopted: "Whereas, the Second Union Co-operative Land and

Building Society of the City of New York has now fulfilled all the purposes for which it was created, and all conditions wherein it was and is limited to determine having been performed save the passage of these resolutions only, and due notice of the same having been given to the members of the said society, be it resolved accordingly that all weekly subscriptions be hereby discontinued, and that the said society be dissolved by the passage of these resolutions, and that its board of management on such dissolution shall immediately become its lawful successor for the purpose of winding up its affairs by collecting its debts, settling with its members and distributing its assets upon the following basis: (1) The creditors or unappropriated members after paying their indebtedness to the society up to November 1st shall receive $700 each on each unappropriated share held by them, or any of them, in lieu of the share which such member might otherwise be entitled to receive of the assets of the society, and in full satisfaction of all claims upon and interest in the funds of said society. (2) Each debtor or appropriated member shall be credited with the full $350 on each share held by him (as his share of the society's surplus funds) and the same shall be offset against the member's indebtedness on bond or mortgage or otherwise to the society, the balance struck, and the members settled with accordingly. It is further resolved and
150 provided, however, that $25 per share of the amounts to be allowed to both creditor and debtor members, as provided in the foregoing resolutions, shall be withheld, in settling with each member, to provide a fund for the payment of legal and other expenses incurred in winding up the society, and provide against a reduction of the estimated amount of the assets upon which the foregoing calculation is based, by reason of the failure of the board of management to collect all of the debts due to the society, the $25 per share so withheld to be paid to the member upon the final settlement of the society's affairs, less such deficiencies as may be charged to the same by reason of the aforesaid. Be it further resolved, that the board of management shall be authorized and empowered to employ competent counsel to bring such suits and to perform such legal services in winding up the said society as the said board may deem necessary, and to pay for the same out of the funds—society funds in their possession. Be it further resolved that the board of management shall be authorized and empowered to employ a clerk to attend to the clerical duties of the board, with a salary to be fixed by the board."

At that time the members had paid in dues the sum of $442 upon each share, and the property of the society, consisting mainly of mortgages given by the members to secure appropriations made to them, amounted to $30,000, which, if then divided among 82 shares the whole number then existing, would have given to each share $365. Under these resolutions the board of managers proceeded to wind up the affairs of the society, and had, prior to the com-
151 mencement of this action, in April, 1887, settled satisfactorily with all the members, and received releases from them, except five, three of whom were debtor members, and two creditor

members. In the month last mentioned, at the instigation of these members, or of some of them, this action was commenced by the attorney general. In the complaint various acts of misconduct on the part of the defendants were mentioned, and it is charged that the resolutions referred to, excepting so much of them as declared the dissolution of the society, were contrary to the articles, the by-laws, and the plan of operation of the society, and were only passed for the purpose of enabling the defendants to carry out their fraudulent scheme of securing to themselves unlawful dividends and profits, and to invalidate the provisions contained in the articles, and a judgment is demanded that the resolutions, in so far as the same provide for the distribution of the assets of the society, be declared null and void and of no effect; that the individual defendants be compelled to account for their official conduct in the management and disposition of the funds and property of the society; that they be adjudged to pay back into the fund of the society all the monies illegally paid out by them for or on account of unlawful dividends, and all monies lost to the society by their neglect to collect the dues, fees and fines, which were owing by the defendants and others, and all monies collected by them in pursuance of the resolution above set out; that the individual defendants be removed and suspended from exercising their office as officers of the society, and that they be enjoined from receiving any debt or demand owing to the society, or from prosecuting any of the
152 foreclosure suits commenced by them against members of the society, or in any way interfering with any of the funds of the society, or from delivering to any one any money, property, or effects of the society, and that it be declared dissolved; that a receiver of its property be appointed by the court, with the usual powers of such receivers in like cases, and that such receiver be directed to pay the creditor members of the society $1,000 on each share, and that the mortgages executed by members of the society be declared discharged, except as to subscription and redemption fees, which became due before October 23, 1884.

The action was put at issue by the defendants, and brought to trial at a special term, and the trial judge found, as facts, the organization of the corporation; the adoption and filing of the articles of association; that on the 23d day of October, 1884, the society could pay to each creditor member the sum of $1,000 upon every share held by such creditor member, and could be dissolved in accordance with the plan of the organization; that the individual defendants caused the society to call a special meeting, at which meeting the resolutions above mentioned were adopted; that a minority of the members protested against the resolutions; and that they had committed various acts of misconduct mentioned. And he found, as conclusions of law, among other things, that according to the provisions of the by-laws, the debtor members of the society were required to pay the redemption fees upon their mortgages up to the time when the society ceased to exist;

that the society was required to remain in existence until
153 it could pay to each creditor member the sum of $1,000 upon each unappropriated share; that the resolutions of October 23, 1884, were, so far as they assumed to make a disposition of the property and assets of the society, illegal and void; that the dividend of $350 payable to the debtor members, as stated in the resolutions, had not been earned, and was illegal; that the attempt by the individual defendants to appropriate to themselves as debtor members the illegal dividend, and the payment thereof to such debtor members, was a violation of their duty as trustees of the society; that the defendant further violated their duty as trustees of the society in omitting to collect the fines due to the society, in demanding of the various debtor members payment of the amounts claimed to be due upon their mortgages to the society, and omitting to make reports of their proceedings to the society. And he found that the plaintiffs were entitled to judgment declaring the society dissolved, removing the individual defendants as trustees, and appointing a receiver, with the usual powers, to distribute the assets and property of the society, and to execute satisfaction pieces of the mortgages made by members who had paid the amounts which had become due thereon up to October 23, 1884.

Judgment was entered in accordance with the decision, in which a receiver of the property and assets of the society was appointed, who was ordered, upon receiving upon any of the mortgages held by the society the amounts due from the mortgagors for redemption fee, and fines which became due and payable to the society
154 up to and prior to October 23, 1884, to execute to the mortgagors full certificates of satisfaction of said mortgages, and cancel the same and the bonds accompanying them. And that they should pay the two creditor members of the society $1,000 each, with interest from October 23, 1884, deducting, however, any amount which might be owing by them for dues and fines prior to that date. And it was further adjudged that the plaintiffs recover the costs of the action, together with an allowance of $500 against the individual defendants, amounting in all to $677.65. From judgment thus entered the defendants appealed to the general term, where the judgment was modified, and affirmed as modified, and from the judgment of the general term both parties appealed to this court, the plaintiffs from the modification thereof only.

EARL, *J.* (after stating the facts as above):

"This society, at the time of its organization, had no capital, the shares were for $1,000 each, and each member was required to pay a weekly subscription of 50 cents on every share held by him, and the actual capital was to consist of the money thus contributed. The scheme clearly was that these contributions were to continue until the society had a cash capital of $1,000 for each share, and then it was to come to an end. As fast as a sufficient amount was thus contributed, it could be borrowed by the members. Any member could borrow or take $1,000 for every share held by him, which he was required to secure by a real-estate mortgage, upon which 10

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per cent. should be paid annually in monthly installments until
155 the whole amount should thus be paid. The member taking what are called 'appropriations,' or, in other words, borrowing money in this way, was not required to pay any interest thereon, but was simply required to pay his weekly dues and his monthly installments. A member might borrow $1,000, if appropriated to him by ballot, or, if not so appropriated, he might obtain that amount by bidding for same, and paying the highest premium offered, and the premium thus paid went into the funds of the society. As, according to the scheme of the society, every member could obtain, on terms of equality with all other members, an appropriation of $1,000 for every share held by him, there was no substantial injustice in allowing the members, who took their appropriations, to have the money without interest. There was no provision in the articles of association, or in the mortgages, which entitled the debtor members to have their mortgages cancelled without payment. Every member was to stand upon an equal footing—the debtor and creditor members. If the scheme was carried out, every member would receive, at the termination of the society, $1,000 for each share held by him; that is, the creditor members would be paid that sum, and the debtor members would receive such a sum of money as, together with the amounts then unpaid upon their mortgages, would make to each of them $1,000 per share. But the scheme was not carried out. The society was continued until the weekly contributions, instead of making a fund of $1,000 for each share, had made a fund of only $442, or even less, and while the society was in that
156 condition, by the act and acquies-ence of all its members, it came to an end, and thus the scheme to some extent was frustrated. It is the theory of the complaint, and the decision of the court below, that the society was dissolved on the 23d day of October, 1884; but the rule of equality must nevertheless prevail among the members. Each member, for each share held by him, was entitled to precisely the same amount in the assets of the society, and such assets should be distributed accordingly. Those who are debtors, if they owed more than their distributive shares of the assets, should pay the balance to the society, and upon such payment should have their mortgages cancelled. If they owed less than their distributive shares, they should have their mortgages cancelled, and receive the balance so as to make them equal with the creditor members. The claim made on behalf of the people, and the five members represented by them in this case, that the three debtor members were entitled to have their mortgages cancelled without payment, and that the creditor members were entitled each to have $1,000, is utterly without any foundation; and the counsel for the defendants has a proper conception of the rights of his clients when he claims that, in winding up the affairs of the society, the trustees are bound to distribute its assets among its members equally, according to their respective shares. The only error, therefore, apparent, in the resolutions under which the individual defendants were proceeding, was in ordering that $700 per share be paid to each of the creditor members, and $350 per share to each of the debtor members.

So far as appears in this record, there was no authority for pay-
157 ing a creditor member a larger distributive share than was paid to a debtor member. It is true that a debtor member may have borrowed money without the payment of interest, but that was his contract, and that was the scheme of the society, and he cannot be required, in the settlement of its affairs, to make any allowance whatever for interest. If he pays, or is charged with the principal due upon his mortgage, he has discharged his whole duty to the society as debtor. In other respects he stands upon a footing of precise equality with the creditor members. Upon the trial the defendants attempted to explain why they made the difference in the payments of $700 to the creditor members and $350 to the debtor members, and, upon objection, they were prohibited from giving the proof.

"But the people, and the five members represented by them, have not complained that the creditor members have been paid or will be paid too much, but their claim is that they have not been paid or offered enough, and they have made no complaint that the amount appropriated for the debtor members is too small, but their claim is that they ought not to be paid anything, and that their mortgages should be absolutely satisfied. It may be that facts exist which would now preclude them from objecting to the appropriation and distribution which has been provided for in the resolutions, and made in pursuance thereof. The three debtor members still remaining who are represented by the plaintiffs in this action received their appropriations but a few months previous
158 to the passage of the resolutions, and they have paid upon their mortgages but a small percentage, and yet their claim is that because the society has come to an end, although prematurely, they are absolutely entitled to have their mortgages cancelled without payment. No claim could be more preposterous, and there is no justification for it in the law or in the articles of association of the society.

"A careful scrutiny of this case fails to disclose to us any proof of any fraud or misconduct on the part of these defendants. With the exception of the discrimination which they made between the debtor and creditor members, of which no one has complained, they were proceeding to wind up the society in precise accordance with the law applicable to the facts. It does not appear that they had taken a dollar to which they were not entitled, or that they had paid any one a dollar to which he was not entitled. They had remitted or failed to collect some fines, but according to the practice of the society, and within a reasonable discretion vested in the trustees or managers of the society, they must have had power to remit and condone fines. They had power also, to settle with the defendant Lowe, who had bought real estate of the society, and given back a mortgage for the purchase price, which he was unable to pay. He offered to surrender the property if the society would take it, and the trustees, in the exercise of a reasonable discretion, made a deduction of $700 from his mortgage in case he would pay the balance and thus reduce his indebtedness to the actual value of the property

Nothing whatever was lost to the society, so far as the case
159 discloses, which could have been saved by any other proceed-
ure. Therefore, assuming that the attorney general in the name of the people could commence and maintain this action, there does not seem to have been, so far as this record discloses, the least ground for doing so. No public right or interest was involved, and no interest whatever except those of the five members, who were all claiming more than they were entitled to, and making charges of misconduct against trustees which, so far as the record discloses, had not the least foundation in fact. The litigation has been most disastrous, entailing large costs and expenses, not only in this action, but by reason of other actions commenced in the name of the receiver, in all probability consuming and wasting most, if not all the remaining assets of the society. These views lead to a reversal of the judgment."

Exhibit X.

In the case of Concordia Savings and Aid Association against Read *et al.*, reported in the 93 N. Y., at page 474, the action was brought to foreclose a mortgage executed by defendant Meier to the plaintiff to secure a bond conditioned for the payment of the sum of $1,850, as follows:—$3.75 contribution, and $2.25 interest, each and every week during the existence of the association, and also all dues, fines, and penalties. The mortgage provided that if the contributions, interest, dues, and penalties specified should remain due and unpaid for three months, then the whole sum, with
interest, and all dues, fines and penalties owing by Meier to
160 the association should be deemed due and might be collected.

The plaintiff in this case was incorporated as a mutual loan and accumulating fund association under an act of the legislature of the State of New York, passed April 10th, 1851, and it was shown that Meier was a member of the corporation. Article seven of the constitution provides that "every member receiving a loan from the association binds himself to pay the weekly contribution of twenty-five cents and fifteen cents interest for every share so received, and for such time as shall be required to pay the holder of every share $125, including the premium allowed by such shareholder;" and article 23 provided that if each and every member should have received for each and every share the sum of $125, deducting therefrom the premium paid by his own consent, then the association should cease and determine, and all mortgages and other securities should be discharged.

The claim on behalf of the defendant was that Meier was bound to pay upon his bond and mortgage his weekly dues and interest only until the association had received money enough to redeem all the outstanding shares, and that it was incumbent upon the plaintiff to prove that there were shares outstanding and the amount required to redeem, and the court said, "We think the proof was *prima facie* sufficient.

"The plaintiff was organized April 1st, 1876, and the number of

its shares was limited to one thousand, at $125 each. A
161 number of persons signed the articles of association, and they must have been shareholders. The association had received money enough from the dues of its members to make the advance to Meier, secured by his bond and mortgage in August thereafter, and hence there must have been a large number of members who paid dues upon shares held by them. To furnish a fund for the redemption of shares, each member paid for each share held by him the weekly sum of twenty-five cents. Thus there would be paid upon each share $13 every year, and if nothing but the dues were paid by members it would take more than nine years to accumulate funds sufficient to redeem all the shares. If the interest, premiums, fines, and penalties received amounted to more than sufficient to pay the losses and expenses of the association, the shares could be redeemed in a less time. Here Meier stopped making payments on his bond and mortgage, or as a member of the association, on the 11th day of June, 1877, less than one year after he obtained the money, and this suit for the foreclosure of the mortgage was commenced in July, 1878, less than two years after he obtained the money. Hence, by no possibility could money enough to redeem the shares have been received by the association from its members in June, 1877, or July, 1878. The evidence was sufficient to throw upon the defendant the burden of showing that all the outstanding shares had in some way been redeemed so as to entitle Meier to have the mortgage discharged.

162 "It matters not whether the moneys secured by the bond and mortgage be called, as it is in the constitution of the company, a loan to Meier, or simply an advance upon his shares. The bond and mortgage were given to secure the repayment of the money in the manner and upon the terms therein mentioned, and it is clear that the money became payable. No material error was committed by the trial court in the computation of the amount due upon the mortgage. The mortgage was given to secure the payment of the precise sum advanced or loaned to Meier, to wit, $1,875. It is true that at the time the mortgage was given, Meier did not carry away with him the full sum of $1,875. The constitution of the association provided that in case there are several members applying for a loan at the same time, said loan shall be given to the member paying the highest premium therefor to the benefit of the association. The taking of a premium in such case is sanctioned by the act of 1851, as amended by chapter 564 of the Laws of 1875, and does not render the loan usurious.

"Meier paid for this loan a premium of $630, and that sum was paid out of the $1,875, and the balance only was actually paid to him, but the whole sum was loaned or advanced, and out of it he paid the premium which went into the treasury of the association for the benefit of all the shareholders, Meier included. The scheme
163 of the association, as embodied in the law of its creation and in the bond and mortgage, was that this sum could be paid back by weekly dues of 25 cents per shares to apply on the principal, and 15 cents per share for interest, and if these payments were

made, also all fines and penalties imposed upon him as a member, then his bond and mortgage were to be void, and all payments were in any event to cease so soon as enough money had been contributed by all the members to redeem all the shares, but in order to have the benefit of these gradual, deferred payments, it was incumbent upon Meier to make them as they fell due and to remain a member of the association by the payment of his dues, interest, fines and penalties. If he did not make these payments, then he was to pay back the money which was advanced to him, and so it is provided in the bond and mortgage.

"This is not a case where a larger sum is made payable in consequence of the non-payment of a smaller sum, and payment of a large sum is not imposed as a penalty. But this is a case where the whole of a specified sum becomes due because the partial payments are not made as stipulated, and the principles of law which authorize courts of equity sometimes to relieve from forfeitures do not apply to such a case as this.

"It is stipulated in the mortgage that if the contributions, the interest, dues or penalties herein specified shall at any time remain due and unpaid for the space of three months, then and in
164 that case the whole sum of $1,875 and the interest due thereon, and all dues, fines and penalties owing by said Meier to said association by the terms of the constitution, rules and regulations thereof, shall be deemed due and may be collected. Therefore, the trial court did not err in taking the sum of $1,875 as the basis of its calculation, and no substantial error was committed in arriving at the sum for which the judgment was ordered, and therefore the judgment should be affirmed, with costs."

Reply.

L. S. WELLING recalled.

Direct examination:

Q. You stated this morning that you were uncertain whether you had paid any fines on this loan or not?

Ans. Yes.

Q. Have you since investigated the matter?

Ans. Yes.

Q. With what result?

Ans. I found that I had never paid them a fine—never have defaulted on this loan at all. Every time it was due I paid them.

Cross-examination:

Q. What did you mean when you stated to me that you had paid ten dollars in fines on some loans?

Ans. My wife, Mrs. Welling, borrowed a sum of money and I paid on that loan.

165 Q. On a loan of this defendant?

Ans. Yes.

Q. The Eastern Building & Loan Association?

Ans. Yes, but not in this case.

Q. But you did pay for your wife ten dollars fine in a case where she had borrowed money from the association, and where the papers were identically similar to these?

Ans. Yes.

Redirect examination:

Q. I hand the witnes a placard and ask him if he ever saw it before?

Ans. Yes.

Q. Whose name is at the bottom of it?

Objected to.

Q. Was this part of the literature sent out to you?

Ans. Yes.

Q. As agent?

Ans. As their agent.

Objected to on the ground that it is not competent, but irrelevant, inadmissible and no part of the contract whatever. Objection overruled. Exception noted. Defendant objects on the further ground that there is no evidence that the Eastern Building & Loan Association published it.

The COURT: He has testified that it was sent to him by the company. Objection overruled. Exception noted.

Recross-examination:

Q. When did you get it?

Ans. Some time in '91.

166 Q. When did you get it?

Ans. About January, 1891. January or February.

Q. When?

Ans. I know that much about it. I don't know when I got it.

Q. When did you get it?

Ans. I don't know.

Q. You don't know?

Ans. I don't know what day I got it.

Q. If you don't know when you got it, it is possible you didn't get it until after April, 1891?

Ans. I couldn't say whether I got it before or after that.

Q. You have no recollection on that subject?

Ans. No, sir.

Plaintiff introduced placard marked Exhibit Y.

The testimony ended here.

EXHIBIT Y.

Eastern Building and Loan Association of Syracuse, N. Y.

America's leading building association.

(Par value of shares, $100 each.)

(Organized under the laws of the State of New York.)

Officers and Directors.

H. H. Loomis, president.
D. H. Murray, vice-president.
Jno. J. W. Reynolds, sec'y and gen'l manager.
Lucius M. Kinne, treasurer.
W. H. Emery, assistant secretary.
M. H. Bunn, assistant general manager.
Chas. A. Pooler, sup't of agencies.
Alex. H. Hubbes, manager loan department.
A. B. Kinne, director.
D. A. Pierce, attorney.

167 Assets inserted here.

For the investor.

This association issues three classes of certificates, designated as instalment, paid up and fully paid. All of which are guaranteed to mature in 6½ years. Amply secured by first mortgages on real estate. Paid-up stock doubles in 6½ years. Fully paid certificates; guaranteed quarterly dividends, 7 per cent. per annum.

For the borrower.

This association has no auction sales, no bidding for loans. And a definite time for repaying a loan.

Liabilities inserted here.

The only association making a contract definite in every particular.

Withdrawal value clearly stated, and never less than the amount paid in instalments.

Stock matures in 78 months.

Borrowers know the exact amount required to cancel their mortgage.

No auction system. No lapses. No forfeitures.

No loans made on farm property, churches, schools, summer hotels or resorts, mills, factories or any property designed for other than general purporses.

For full particulars, to subscribe for shares, apply to

L. S. WELLING,
Darlington, S. C.

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168 The attorneys for the plaintiffs and defendant admit the same state of facts, including the laws of the State of New York, which were introduced into evidence, and agree as there is no fact to be found by the jury, that his honor can direct a verdict for the plaintiff or defendant in accordance with his construction of the written contract under the law. Plaintiffs' attorneys request his honor to direct the jury to return a verdict in favor of the plaintiffs.

Mr. ELLIOTT: I will ask your honor to direct the jury to return a verdict in favor of the defendant on each or all of the following grounds:

1st. That the Eastern Building and Loan Association was incorporated under the chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, and as the plaintiffs contracted with the defendant, then they are bound by such laws and are not exempt from making the monthly or other stated payments, provided in the articles of association, upon the ground that by reason of losses or otherwise the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon.

2nd. That the supreme court of the State of New York in December, 1895, in the case of O'Malley *vs.* The People's Building, Loan & Savings Association, decided that a corporation charter under said chapter 122 of the Laws of 1851 of the State New York and the acts amendatory thereof, did not possess the power or authority
169 to issue a certificate specifying a fixed maturity period, and that such a clause should be construed as an estimated period of maturity.

3rd. That the payment by plaintiffs of the sum represented by the seventy-eight notes to the defendants does not repay the amount of plaintiffs' loan to defendant, unless such payments and the earnings of the defendant had matured the plaintiffs' stock.

4th. That the plaintiffs' indebtedness upon their loan, secured from defendant will not be fully paid, until the shares of stock held by the plaintiffs reach par value, or by reason of plaintiffs' payments into the loan fund of defendant and the dividends credited thereto.

5th. That the plaintiffs are not entitled to a cancellation of their mortgage until such time as their stock matures and reaches the par value of $100 per share.

6th. That until the amounts paid by the plaintiffs into the loan fund of defendant, augmented by dividends credited thereto, matures plaintiffs' stock, the plaintiff- *is* not entitled to a discharge of their mortgage.

7th. That defendant association was incorporated under chapter 122 of the Laws of 1851, of the State of New York, and the acts amendatory thereof, and that the plaintiffs are members of said association, bound by its articles of incorporation and its by-laws, rules and regulations and the defendant being, under said laws, a

mutual corporation, the plaintiffs, as members, are bound to sustain their *pro rata* share of any losses the association may suffer as well as to participate in dividends declared from the earnings.

170 The COURT: In ruling upon the legal question as to whether or not the mortgage in issue had been paid and should be marked satisfied, Judge Watts said:

The question came up before me whether this mortgage was cancelled. If it was cancelled, it was the duty of the holder of the mortgage to cancel it in the register's office, in this county, within three months, if not the penalty under the statutes attaches.

Now, there are a great many interesting points in this case. It has been most ably argued on both sides. I have listened to it with a great deal of pleasure, as it was something new to me. I am frank to say that I know very little about building & loan associations. I have had very few cases before me since I have been on the bench and never had a case while at the bar. For a short time I owned some stock in one, but I never knew anything about it, and I got out of it as quick as I could.

But my views in the case are these—and in announcing them I do not think it is necessary for me to consider all the points which have been so ably argued in this case.

The question here is: What was this mortgage given to secure? A mortgage is a pledge to pay certain things—the pledging of certain property to pay certain things incorporated in the mortgage—a bond or note, something of this kind. My construction of this mortgage is this: The agreement between the parties in that mortgage was that these plaintiffs executed seventy-eight notes to

171 be paid at certain times. That was the evidence of the debt.

The security to pay those seventy-eight notes was the real estate described in this mortgage. When they mortgaged their property it was not to secure fifty shares of building and loan stock. There was no provision in that mortgage that they were to continue to pay their monthly assessments thereon until the fifty shares of stock had matured the value of one hundred dollars each; but they simply pledged their property to pay the seventy-eight notes as they fell due with any fines that might be due under the by-laws.

Now, the sole question is, Have they paid those seventy-eight notes? If they have been paid, the lien of this mortgage has been cancelled—extinguished. It is admitted that seventy-five of these notes have been paid, and of the other three tender was made and the offer refused.

I hold under the plain terms of this mortgage that when these plaintiffs paid the seventy-five notes and tendered the payment of the other three notes, and the defendant refused to accept them that that extinguished the lien of this mortgage; and this mortgage should be marked and cancelled. And the undisputed testimony also is that the fees of the register was tendered and the defendants refused to mark the mortgage satisfied.

I therefore hold as a matter of law that the penalty attaches in favor of the plaintiffs against the defendant.

The mortgage says that these notes were to be paid in accordance

with the by-laws of the association. That meant they were to be paid at maturity, as I take it, and if they were not paid the
172 fines and penalties provided by the by-laws were to be attached and to become a part of these notes.

I hold that the mortgage is cancelled and that when the plaintiffs paid the seventy-five notes and tendered the payment of the other three notes that it was the duty of the association to turn that mortgage over, and when they failed to do that then the plaintiffs had the right to wait three months, (I believe is the statute) and when they tendered them the fees, it was their duty to mark it satisfied; and if they did not do that they are bound to pay up the penalty as prescribed by the statute.

I don't think it is necessary in this case to pass upon the point as to whether or not Welling & Bonnoitt are still members of this association. I am satisfied under the testimony that the mortgage is dead. I presume that this case will, of course, go to the supreme court, and they will settle the law fully. I am sorry we have not a decision of our own court with reference to a case like this.

But those are my views and I so hold.

These defendants have asked me to direct a verdict in their favor on the ground that there is no dispute between them on the facts of the case; and that is a question of law to be construed by me. The plaintiffs also ask for a verdict to be directed in their favor. Under the undisputed facts in the case I think I have the right to direct a verdict in favor of the plaintiffs. I refuse to direct a verdict for the defendant as requested.

173 *Charge.*

Mr. FOREMAN AND GENTLEMEN: Both sides in this case request me to construe the law in this case.

The attorneys for the plaintiff- and for the defendant admit the same state of facts. They have agreed that upon my construction of the law of the case I should direct a verdict for the plaintiffs or for the defendant just as I construe the law. I have construed the law here in favor of the plaintiffs, and you will therefore write a verdict for the amount they claim here. There is no dispute here as to the facts. It has come down to a point of law, and I decide the law in favor of the plaintiffs. I therefore direct you to find a verdict for the plaintiff- in the amount which they have sued for.

The form of your verdict will be:

"We find for the plaintiffs in the sum of eighteen hundred dollars" and sign your name as foreman.

Verdict for plaintiff- for the sum of eighteen hundred dollars and judgment entered up thereon December 22, 1898.

Written notice of intention to appeal duly given.

Order.

The first of the above-named cases having come on for trial, and having resulted in a verdict in favor of the plaintiffs; and there-

upon each of the subsequently named cases having been
174 called for trial, and it being admitted that all of said cases were similar and involved the same issues and questions in all respects, and a verdict in each of said cases having been taken with the stipulation, by all the counsel made in open court, that in case of appeal to the supreme court the same shall be heard on the pleadings, testimony and record in the first of said named cases, and that the verdict and judgment in each of said cases shall abide the result of said appeal.

R. C. WATTS,
Presiding Judge.

Dec. 10, 1898.

Exceptions.

1. That his honor erred in overruling the oral demurrer interposed to the complaint, on the following grounds:

"That the complaint does not state facts sufficient to constitute a cause of action in this; that the complaint does not allege the law of the State of New York, governing the mortgage contract, and which is a part and parcel of the mortgage contract."

2. That his honor erred in overruling the motion made for nonsuit on the following grounds:

"That there is no evidence that the mortgage was paid according to the terms and provisions of the by-laws of the association and according to the laws of the State of New York, that this contract is to be construed according to the laws of New York, and
175 there is no evidence before the court showing what the laws of New York are; further upon all the evidence of proof in the case there is nothing to show a compliance and payment with the terms of the contract; and further that the only evidence of compliance with the contract is that seventy-five notes were paid and three others offered to be paid, and that the premises were kept insured and fines paid."

3. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the Eastern Building & Loan Association was incorporated under the chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, and as the plaintiffs contracted with the defendant, then they are bound by such laws and are not exempt from making the monthly or other stated payments, provided in the articles of association, upon the ground that by reason of losses or otherwise the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon."

4. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the supreme court of the State of New York in December, 1895, in the case of O'Malley *vs.* The People's Building, Loan and Savings Association, decided that a corporation chartered
176 under said chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, did not possess

the power or authority to issue a certificate specifying a fixed maturity period, and that such a clause should be construed as an estimated period of maturity."

5. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the payment by plaintiffs of the sum represented by the seventy-eight notes to the defendant does not repay the amount of plaintiffs' loan to defendant, unless such payments and the earnings of the defendant had matured the plaintiffs' stock."

6. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the plaintiffs' indebtedness upon their loan, secured from defendant will not be fully paid until the shares of stock held by the plaintiffs reach par value, or by reason of plaintiffs' payments into the loan fund of defendant and the dividends credited thereto."

7. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That the plaintiffs are not entitled to a cancellation of their mortgage until such time as their stock matures and reaches the par value of $100 per share."

177 8. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That until the amounts paid by the plaintiffs into the loan fund of defendant, augmented by dividends credited thereto, matures plaintiffs' stock, the plaintiff- *is* not entitled to a discharge of their mortgage."

9. That his honor erred in refusing to direct the jury to find a verdict for the defendant, as requested, as follows:

"That defendant association was incorporated under chapter 122 of the Laws of 1851, of the State of New York, and the acts amendatory thereof, and that the plaintiffs are members of said association, bound by its articles of incorporation and its by-laws, rules and regulations and the defendant being, under said laws, a mutual corporation, the plaintiffs, as members, are bound to sustain their *pro rata* share of any losses the association may suffer as well as to participate in dividends declared from the earnings."

10. That his honor erred in not deciding the question of the plaintiffs' membership in said defendant association as raised by the pleadings.

11. That his honor erred in directing the jury to find a verdict in favor of the plaintiffs, thereby holding, as matter of law, that according to the terms and conditions of the written contract, and the laws of New York, that upon the payment of the seventy-eight notes the mortgage contract was cancelled, when the sum

178 represented by such payments and the earnings of the defendant association had not matured the plaintiffs' stock.

12. That his honor erred in sustaining the plea of payment and on that ground directed the jury to find for the plaintiff.

THE STATE OF SOUTH CAROLINA,
County of Darlington.

In the Supreme Court.

WELLING & BONNOITT and Others, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Defendants, Appellants.

To T. H. Spain, Esq., attorney for defendants, appellants:

You will please take notice that the respondents in each of the above cases will ask the supreme court, in case it shall find itself unable to sustain the judgments of the circuit court upon the grounds on which they were rested by his honor, Judge Watts, and upon his construction of the contracts, to wit: the notes and mortgages of the respondents, nevertheless to affirm the said judgments of the circuit court upon the following grounds:

Because it is respectfully submitted:

179 I. That the amounts secured by the respective mortgages of the respondents were fixed and evidenced by the notes executed by them and set forth in their mortgages, independent of the maturity of the stock withdrawn and surrendered at the time of the loans.

II. No relationship of mutuality, such as claimed, existed between these borrowers and the association; when their stock was withdrawn they ceased to be stockholders, and when the association loaned them its funds the relation of debtor and creditor was at once established.

III. Because, even if the relationship between its stockholders and the said association was otherwise that of mutuality or of partnership, yet by the withdrawal and surrender of their certificates of stock written and signed upon the backs thereof required as a condition precedent to granting the loans, respondent's membership in said association ceased, and such relationship likewise ended with such withdrawal.

IV. Because said contracts, to wit: the notes and mortgages in question payable in a definite period and evidenced by fixed notes were not *ultra vires* of the said defendant corporation.

V. Because said corporation is estopped from interposing the plea of *ultra vires*, or that the relationship of mutuality such as claimed exists between these respondents and the said association:

a. It represented to these respondents that it possessed the power to make the contracts in question.

180 *b.* Because it held out that it was the only building and loan association making definite contracts, and that the borrower knew exactly how much was required to cancel his mortgage, circulated its literature to the same effect, made the contracts here accordingly, taking a definite number of notes and mortgages to secure them, and required respondents to withdraw their stock, as evi-

denced by their signed writing in pursuance of the plan so adopted in every case here in question.

c. Because, pursuant to the terms required, respondents withdrew and surrendered their certificates of stock, gave each their definite and fixed notes and mortgages to secure the same, and have fully performed their contracts by payment of the amounts required thereunder and which their said mortgages were given to secure.

VI. After withdrawal of stock and loans made, respondents were either shareholders or they were not. If it be held that the respondents' membership in the association did not cease by reason of their withdrawal and surrender of stock, or that their relation to the said association was still one of mutuality or of partnership by reason of their being still shareholders therein, said notes and mortgages are to be construed and governed by the laws of South Carolina, because it is provided in art. 7 of the conditions of certificates of shares that the payment of instalments upon said shares were to be paid to an authorized agent or sent to the home office, and all payments by the respondents, according to the undisputed testimony, were made to the authorized agent of the association at Dar-
181 lington, in accordance with its consent and direction; hence the contracts provided for performance in South Carolina, and were actually performed thereunder, at Darlington in this State.

VII. Because if construed and governed by the laws of New York, there was nothing in the testimony, either of statutory or case law, which required or justified these definite contracts to be held indefinite or indeterminate as to the amounts secured to be paid by the mortgages, or to create for the parties other and further notes neither made nor contemplated by them, and not secured by their mortgages, whether these be the kind of contracts usually made by building and loan associations or not.

VIII. Because these contracts should be construed and governed by the laws of South Carolina, but whether construed and governed by the laws of this State and the decisions of our court or by settled principles of law as applied to their terms and conditions, when respondents paid and tendered the full amounts of their respective notes as they matured, their mortgages were discharged, and should on demand and tender of fees of office have been marked satisfied.

W. F. DARGAN,
Of Counsel for Welling & Bonnoitt and H. M. Willcox.
WOODS & MACFARLAN,
Attorneys for H. A. Edwards and K. M. Oakes et al.
J. J. WARD,
Attorney for Welling & Bonnoitt, C. E. Ward, and A. W. Welling.

182 We hereby agree that the foregoing shall constitute the case for the supreme court on appeal in the above-stated actions, and also the return required by law.

CHESTER M. ELLIOTT,
T. H. SPAIN,
Appellant's Attorneys.

W. F. DARGAN,
Of Counsel for Welling & Bonnoitt and for H. M. Willcox, Respondents.

WOODS & MACFARLAN,
Attorneys for Respondents H. A. Edwards and K. M. Oakes et al.

J. J. WARD,
Attorney for Welling & Bonnoitt, C. E. Ward, and A. W. Welling.

March 27, 1899.

It is hereby certified that U. R. Brooks was, on the day of the annexed certificate and attestation, clerk of the supreme court of South Carolina and duly authorized to make the same; that such clerk is the proper officer to make such certificate and attestation, and that the same are in due form; that the seal affixed to said certificate is the seal of office of the clerk of the supreme court of South Carolina; that the signature thereto of the said clerk is in his own proper handwriting and is genuine; and, further, that the clerk is the custodian of the records so certified and attested and custodian of the seal of said court hereunto affixed, and that full faith and credit may and ought to be given to his official acts.

In testimony whereof the seal of the court is hereunto affixed.

Witness my hand, at Columbia, the 10th day of January, in the year of our Lord one thousand nine hundred.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

183 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1900, Fourth Circuit, Darlington County.

WELLING and BONNOITT, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

NOVEMBER 28, 1899.

The opinion of the court was delivered by—

Mr. Justice GARY:

This action was brought for the purpose of recovering the penalty under sections 1894–1895 of the Revised Statutes, for not entering satisfaction in the proper office on the mortgage executed by the

plaintiffs in favor of the defendant. The complaint and the defense set out in the fourth paragraph of the answer, state the facts out of which the controversy has arisen. That part of the mortgage which is material to the consideration of the questions raised by the exceptions is as follows: "This grant is intended as a security for the payment of the sum of $6,175.60, the same being the principal, interest and premium of a loan from said association, which said loan was made pursuant to and accepted under the provisions of the by-laws of said association, and which said by-laws have been read by the mortgagors and are hereby made a part of this contract,
which said loan is evidenced and secured to be paid by seventy-
184 eight certain promissory notes of even date herewith, executed by the said Lawrence S. Welling and Marion Bonnoitt, payable to the said association, at its office in Syracuse, as follows: one of each of said notes is to be paid on or before the last Saturday of each and every month until all of the seventy-eight notes are fully paid, together with interest on each of said notes after maturity at the rate of six per cent. per annum, payable semi-annually until said notes are fully paid. And the said mortgagors, for themselves and their heirs, executors, administrators and assigns, hereby covenant * * * and agree * * * with the party of the second part, its successors and assigns, to pay said principal, interest and premiums at maturity, and the interest accruing on said notes after maturity, and all fines and penalties that may be imposed pursuant to the provisions of the constitution and by-laws of said association, and also keep and perform all promises and engagements made and entered into with said association, according to the true intent and meaning of its by-laws and articles of association." The plaintiffs introduced in evidence a circular letter entitled "The definite contract plan," which among other things contained the following:

"For the investor.—This association issues three classes of certificates, designated as instalment, paid up, and fully paid. All of which are guaranteed to mature in 6½ years. Amply secured by first mortgages on real estate. Paid-up stock doubles in 6½ years; fully paid certificates; guaranteed quarterly dividends, seven per cent. per annum.

"For the borrower.—This association has no auction sales, no bidding for loans, and a definite time for repaying a loan.

"Liabilities inserted here.—The only association making a contract definite in every particular; withdrawal value clearly stated, and never less than the amount paid in instalments.

"Stock matures in 78 months.—Borrowers know the exact
185 amount required to cancel their mortgage. No auction system, no lapses, no forfeitures."

The plaintiffs also introduced in evidence another circular which, among other things, contained the following statement:

"Illustration.—Showing costs and profits to the investor of ten shares of $1,000 in six and one-half years, at time of maturity:

He pays a membership fee of $1.00 per share.....	$10 00
He pays monthly instalments of $7.50 per month for 78 months, $7.50 x 78.....	585 00
Total amount invested...	$595 00
He receives in cash at maturity	1,000 00
His net gain is.....	$405 00

Illustration.—Showing the cost of $1,000 loan on ten shares of stock for six and one-half years. He bids ten per cent. ($100), which is deducted from the $1,000 borrowed:

He pays $15.84 per month for 78 months.....	$1,235 52
He paid for stock	10 00
Total	$1,245 52

It will be seen from the above that $345.52 is the amount paid in excess of the actual amount received on loan. This for the use of the money for six and one-half years. Thus the borrower pays less than six per cent. per annum."

The first and main question that will be considered is whether there is error on the part of the circuit judge in his construction of the contract. In the case of Williamson *v.* B. & L. Association, 54 S. C., 582, the court says: "The agreement alleged in the plaintiff's affidavit and the by-laws present schemes for maturing the shares of stock that are radically different. The provisions of the said agreement and of the by-laws for maturing the shares of stock are repugnant and in irreconcilable conflict. The question is
186 thus presented for this court to decide which shall prevail. * * * It is a well-known fact that comparatively few people that become shareholders in such associations are familiar with their by-laws. They rely upon the honesty, integrity and fair dealing of those who manage the affairs of the association. It is also a well-known fact that the by-laws are frequently intricate, and almost unintelligible to the average shareholder, and those in charge of the affairs of the association usually become exceedingly expert in the interpretation of them, thus giving the association a decided advantage in the way of information over the shareholders. Public policy, in order to prevent the perpetration of fraud, and to prevent just such a case as we now have before us, in which the plaintiff alleges that he was induced by the express promises and the literature of the defendant to part with his money in purchasing its shares of stock, demands that the defendant should not be allowed to elect whether it will be bound by its by-laws or its express agreement as to the time when the shares would mature." * * *

The circular will next receive consideration. The construction of a written instrument is a question of law to be decided by the court. This court has the right, therefore, to construe the circular. It unquestionably shows that the defendant interpreted the contract to mean that the shares would mature at a fixed and definite period.

It is a well-settled principle that when the construction to be given a contract is rendered doubtful by the language thereof, the interpretation of the contract by the parties themselves is entitled to great weight. Chicago *v.* Sheldon, 9 Wall., 50; Railroad Co. *v.* Trimble, 10 Wall., 367; Steinbach *v.* Stewart, 11 Wall., 566; Lowber *v.* Bangs, 2 Wall., 728. Our conclusion as to the proper construction of the contract is in harmony with the interpretation placed upon it by the defendant, and this is an additional reason why the by-laws should not prevail against the express agreement fixing the time when the shares would mature. From the foregoing it will be seen that the express agreement set forth in
187 the mortgage and the by-laws of the association are inconsistent and in irreconcilable conflict. As they are repugnant, the express agreement, and not the by-laws, must prevail.

The appellant, however, contends that the said agreement and the by-laws are to be construed under the laws of New York. In the case of Gooch *v.* Faucette (N. C.), 39 L. R. A., 835, the court uses this language in speaking of comity: "This is not a right of either State, but is permitted and accepted by the States from mutual interest and convenience, from a sense of the inconvenience which would otherwise result, and from a moral necessity to do justice in order that justice may be done in return. Without this rule, the law of one State can have no force in another. But there is no comity among the courts of the different States. They administer the law in the same way and by the same reasoning by which all other principles of the municipal law are ascertained and guided. It is the duty of every State to look to the interests of its own subjects. Comity being voluntary and not obligatory, cannot supercede all discretion on the subject. Vattel, at page 61, says: 'It belongs exclusively to each nation (State) to form its own judgment of what it prescribes to it—what is proper or improper for it to do; and it will examine and determine what it can do for another, without neglecting the duty which it owes to itself.' No State can demand the recognition of its laws in another, if they are deemed by the latter to be impolitic or unjust, of bad morals, or injurious to the rights and interests of its citizens, or against its public policy. In Bank of Augusta *v.* Earle, 38 U. S.; 13 Pet., 519, 589; 10 Led., 274, 308, Chief Justice Taney said: 'And courts of justice have always expounded and executed them (contracts) according to the laws of the place in which they were made, provided that law was not repugnant to the laws or policy of their own country. The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered,
188 and is inadmissible when contrary to its policy or prejudicial to its interests.' * * * Story Confl., p. 32, section 38, says: 'In the silence of any positive rule * * * courts of justice presume the tacit adoption of them (foreign laws) by their own government, unless they are repugnant to its policy or prejudicial to its interests.' Many other authorities to the same effect might be cited." In the case of Pope *v.* Hanke (Ill.), 28 L. R. A., 568, the court says: "Comity between different States does not require a law of one

State to be executed in another, when it would be against the policy of the latter State. No State is bound to recognize or enforce contracts which are injurious to the welfare of its people, or which are in violation of its own laws" (citing a number of authorities). It thus appears that the State is not compelled from mere comity to recognize the laws of New York, for the reasons stated. The agreement herein is, in our opinion, injurious to the interests of our people, and whatever may be the laws of New York, we do not think they should be enforced in this State.

It is the judgment of this court, that the judgment of the circuit court be affirmed.

189 *Judgment of the Supreme Court.*

STATE OF SOUTH CAROLINA,
Darlington County.

In the Supreme Court.

LAWRENCE S. WELLING ET AL., Respondents,
vs.
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Appellant.

Appeal from circuit court.

T. H. Spain, for appellant.
W. F. Dargan, J. J. Ward, Woods & Macfarlan, G. G. Thompson, Willcox & Willcox, for respondents.

It is the judgment of this court, that the judgment of the circuit court be affirmed.

By the court:
[L. S.] U. R. BROOKS, *Clerk.*

True copy.
Test:
[L. S.] U. R. BROOKS, *Clerk.*

Remittitur to circuit court for Darlington county, 9th December, 1899.

190 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

LAWRENCE S. WELLING and MARION BONNOITT, Plaintiffs, Respondents,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant, and Five Other Plaintiffs, Respondents, against said Defendant, Appellant.

Now comes the defendant, appellant Eastern Building and Loan Association of Syracuse, N. Y., by its attorneys, and moves and peti-

tions this honorable court for a rehearing in this case and for a re-argument thereof, and respectfully shows to the court that there are divers manifest errors of law in the decision and opinion of the court herein, and your petitioner especially shows to the court that the decision, opinion and judgment in this case are in violation and contravention of the Constitution of the United States, and have the effect of impairing the obligation of a contract, depriving petitioner of its property without due process of law, and denying to it
191 the equal protection of the laws of this State, and in support of this motion and petition, and of the grounds thereof just stated, your petitioner respectfully submits that—

I.

It appears from the face of the record in this case and especially from the complaint of the plaintiffs, respondents and the answer of the defendant, appellant, and particularly from the fourth paragraph of said answer (Record, p. 7, fol. 19; p. 11, fol. 32) that defendant, appellant is a domestic corporation of the State of New York, organized and existing under the laws of said State, and having its corporate situs therein, and that the plaintiffs and each of them are and were at the times mentioned in the complaint and the answer aforesaid, members of and stockholders in appellant corporation.

II.

It also appears from the face of the record in this case that the only question in controversy or judicially determined in this case, either by the court below, or by this court, was and is as to the construction, meaning and effect of the contract between plaintiffs, respondents as "advanced" or borrowing stockholders, and the appellant corporation, and of the mortgage executed by the plaintiffs as "advanced" or borrowing members of appellant, a foreign corporation, and the effect upon such contract and mortgage, and upon appellant corporation, of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893.

192 III.

It also appears from the opinion and judgment of the court below, and from the opinion rendered by this court affirming the judgment of the court below, that said law of 1893, as embodied in said sections of said Revised Statutes, was held applicable upon the facts shown by the record herein, to the defendant, appellant, and that under said law the full penalty thereof has been inflicted and imposed upon your petitioner, judgment therefor rendered in the court below, and that said judgment, by the opinion rendered in this court, stands affirmed (Record, p. 170, fol. 508; p. 173, fol. 519).

IV.

It also appears from the opinion of this court and from the opinion and judgment of the court below, that said sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893 were applied

to and enforced against your petitioner, defendant, appellant, and judgment rendered against your petitioner in contravention and violation of the Constitution of the United States, and the fourteenth amendment thereto, in the following respects, to wit:

(a.) That by the answer of your petitioner, defendant below and appellant in this court, and particularly by the fourth paragraph of said answer (Record, p. 8, fol. 23; p. 11, fol. 32), your petitioner stated, plead and relied upon a contract entered into in the State of New York, to be performed in that State subject to the laws
193 of that State, and legal and valid thereunder, between your petitioner and plaintiffs, respondents herein, whereby plaintiffs, respondents, at the times set forth in said paragraph of said answer, became stockholders in and members of your petitioner, which then was and now is, as alleged in said answer and shown by the evidence in this case, a corporation, duly organized and existing under and pursuant to the laws of the State of New York, and having its corporate situs in said State alone, but duly authorized under the laws of South Carolina to enter into contracts with the citizens of South Carolina and do business in said State.

(b.) That by the said answer of your petitioner, and in said fourth paragraph of said answer, your petitioner pleads and relies upon certain specific laws of the State of New York, and that said laws were in this case given and received in evidence, and constitute a part of the undisputed facts shown by the record in this case (Record, p. 8, fol. 23; p. 119, fol. 357; pp. 124–133, fols. 370–411), and a part of the contract between plaintiffs, respondents as stockholders and advanced members of defendant corporation, your petitioner, and your petitioner in its corporate capacity as a corporation of the State of New York.

(c.) That defendant, your petitioner, also introduced and gave in evidence as a part of the laws of the State of New York,
194 binding upon plaintiffs, respondents, as stockholders in and members of your petitioner in its corporate capacity, certain decisions and judgments of the courts of the State of New York, to wit, the opinions of the courts of the State of New York in the case of O'Malley *v.* People's Building and Loan Association, 92 Hun., 572; the case of Englehart *v.* Fifth Ward Loan Association, 148 N. Y., 281; the case of The People of the State of New York *v.* Lowe and others, 117 N. Y., 175; the case of Concordia Savings, &c., Association *v.* Reed, 93 N. Y., 474 (Record, p. 118, fol. 354; p. 120, fols. 358, 359; p. 138, fol. 412; p. 145, fol. 433; p. 145, fols. 434, 435; pp. 146–159, fols. 436–476; pp. 159–164, fols. 476–490), and your petitioner respectfully submits that all of said cases are a part of the law of the State of New York, binding upon plaintiffs, respondents, as members of and stockholders in defendant corporation, who are subject as such to the laws of the State of New York, and the decisions of the courts of said State construing the same (Record, pp. 174–177, fols. 522–525, 530–531).

(d.) That plaintiffs, respondents, gave and introduced in evidence the articles of incorporation of your petitioner, showing the incorporation of your petitioner under the laws of New York in 1890,

and also gave and introduced in evidence the by-laws of defendant,
your petitioner, adopted by it and in force in the year 1890
195 (Record, p. 12, fol. 35; pp. 36–49, fols. 106–147; pp. 50–66,
fols. 140–196), and that said articles of association and by-laws, together with the applications for stock in defendant association made by plaintiffs, respondents, the applications for advances or loans made by them, the certificates of stock in defendant corporation issued to them, and the mortgage executed by them to defendant corporation, when construed together, constitute the contract between plaintiffs, respondents, and defendant corporation, your petitioner, and show and establish that said contract and the relations and status of plaintiffs, respondents, to your petitioner were established and exist by and under the laws of the State of New York, and not otherwise, and must be determined under those laws (Record, pp. 84–85, fols. 251–255; pp. 86–90, fols. 256–268; pp. 90–91, fols. 270–273; pp. 66–70, fols. 196–209).

V.

That it appears from the record in this case that plaintiffs, respondents, became stockholders in, members of and "advanced" or borrowing members in and of defendant corporation prior to the enactment of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and that said sections of said statutes were enacted and came into force and effect long after the relations of plaintiffs, respondents, with defendant, appellant, as corporation and stockholders had been established; long after the contract or contracts
aforesaid between plaintiffs, respondents, and defendant corpo-
196 ration, and long after the execution, as a part of said contract or
contracts and as an incident thereof, of the mortgage given in evidence and relied upon by the plaintiffs, respondents, it appearing from the records that said mortgage was executed on the 1st day of May, in the year of our Lord one thousand eight hundred and ninety-one (Record, p. 66, fol. 196).

VI.

That by the decision and judgment of the court below in this case, and by the opinion and decision heretofore rendered and given in this court in this case, the obligation of the contract between plaintiffs, respondents and defendant corporation has been impaired, in contravention of section 1, article 10 of the Constitution of the United States, and that said judgments, decisions and opinions and said sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893 are laws impairing the obligation of the contract between your petitioner, defendant corporation, and the plaintiffs, respondents, and are, therefore, in violation and contravention of the Constitution of the United States.

VII.

That the opinion and judgment of the court below, as affirmed by this court, and the decision and opinion of this court rendered

in this case are in violation and contravention of the Constitution of the United States, in this, that they deny full faith and credit "to the public acts, records and judicial proceedings" of the State of
197 New York, notwithstanding the fact that such public acts, records and judicial proceedings of the State of New York are binding upon plaintiffs, respondents as members of and stockholders in defendant corporation, your petitioner.

VIII.

That the decision and judgment of the court below in this case, as affirmed by this honorable court, and the opinion and decision of this court affirming the same, are in violation and contravention of section 1 of article XIV of the amendments to the Constitution of the United States in this, that said judgment, decision of affirmance and opinion have the effect of depriving and do in fact deprive your petitioner, defendant corporation, of its property without due process of law, and have the effect of denying and do deny to your petitioner, "a person" within the jurisdiction of this court, "the equal protection of the laws."

IX.

That no other distinct or different question than that arising out of the relations between plaintiffs, respondents, and defendant corporation, your petitioner, and out of the contracts aforesaid between them is involved or determined in this case, or by the judgment therein in the court below, as affirmed in this case, or by the opinion of this honorable court heretofore rendered herein.

X.

That the rights of defendant corporation, your petitioner,
198 under the Constitution of the United States and the fourteenth amendment thereto, are fully shown and arise by necessary intendment and implication upon the pleadings in this case, and particularly under the allegations of the fourth paragraph of defendant's answer herein, as aforesaid, and that the decision and judgment of affirmance herein is in denial of the rights claimed.

XI.

That by said answer, and under and upon the evidence aforesaid given in this cause, and constituting a part of the record herein, defendant corporation, your petitioner, claims, sets up and relies upon the rights, privileges and immunities guaranteed to it as a domestic corporation and artificial person organized under the laws of the State of New York by the Constitution of the United States.

XII.

That by the judgment of the court below in this case, affirmed in this honorable court, and by the opinion of this court rendered herein, the constitutional rights, privileges and immunities claimed

and relied upon by defendant corporation, your petitioner, are denied to your petitioner; it is deprived of its property without due process of law; it is denied the equal protection of the laws of this State, and the obligation of the contract between plaintiffs, respondents, and defendant corporation, your petitioner, is impaired, and said contract in effect vacated, annulled and for naught held, so as to wholly deprive your petitioner of all the rights and claims
199 held by it against plaintiffs, respondents, under and pursuant to the articles of association and incorporation of your petitioner as aforesaid, the mortgage indenture aforesaid, the by-laws of your petitioner aforesaid, and the other contract rights, claims and privileges of your petitioner as against the plaintiffs, respondents, under the contract or contracts aforesaid between your petitioner and plaintiffs, respondents.

XIII.

That it appears from the judgment of the court below, as affirmed by this honorable court, and from the opinion of this court herein—

(*a.*) That the judgment is for a penalty under a statute passed subsequently to the contract of plaintiffs, respondents, as stockholders with the defendant corporation, and to the execution of the mortgage by the plaintiffs, respondents, as stockholders and as "advanced" members of defendant corporation, becoming such under their contract of membership aforesaid.

(*b.*) That if the mortgage aforesaid is not discharged by payment, then sections 1894 and 1895 of the Revised Statutes of South Carolina have no application, and the penalty cannot be inflicted upon your petitioner.

(*c.*) That if the defendant's construction of the mortgage and of the contract of plaintiffs, respondents, as stockholders in defendant corporation is the correct construction, then the statute does not apply, and the penalty cannot be inflicted.

200 (*d.*) That from these premises it appears that the decision and opinion of this honorable court, therefore, necessarily turns upon the construction of the mortgage and of the plaintiffs, respondents' contract as stockholders with the defendant corporation.

(*e.*) That from this it necessarily follows that if the construction of the contract and mortgage by this honorable court, as set forth and stated in its opinion herein, is erroneous, and if the construction thereof for which defendant contends is correct, then the application of said sections of the Revised Statutes of South Carolina of 1893 impairs the obligation of said contract between plaintiffs, respondents as stockholders and defendant corporation, your petitioner, when the same is correctly construed, and the infliction of the penalty under said statute also impairs said contract, because the penalty imposed by said statute is not a burden within the purview of the contract itself at the time of its execution between the parties, and at the time when plaintiffs, respondents became stockholders in and advanced members of defendant corporation, your petitioner.

XIV.

That it appears from the opinion rendered by this honorable court herein that the contract existing upon all the pleadings aforesaid between defendant corporation, your petitioner, and plaintiffs, respondents, has been erroneously construed by this honor-
201 able court, in violation of the Constitution of the United States and of the constitutional rights of your petitioner, so as to invalidate, avoid, discharge, and annul said contract, release and discharge the mortgage executed by plaintiffs, respondents to your petitioner, and relieve and discharge plaintiffs, respondents from their contractual obligations as stockholders with your petitioner; and so as to inflict a penalty upon your petitioner in violation of the Constitution of the United States.

XV.

That the construction which this honorable court, by its decision in this case, gives to sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, impairs the obligation of the contract between plaintiffs, respondents and this defendant, your petitioner, and deprives your petitioner of its property without due process of law, and deprives your petitioner of the equal protection of the laws, and that said statute, as construed by the decision of this honorable court in this case, and the decision, opinion, and judgment of the court herein, are laws impairing the obligation of contracts, to the injury of your petitioner, and have the effect of depriving your petitioner of its property without due process of law.

XVI.

Wherefore, defendant corporation, your petitioner, respectfully submits that the judgment of affirmance rendered or about to be rendered and entered by this honorable court in this case is erro-
202 neous, and that the opinion of this honorable court in this case is erroneous and in contravention of the Constitution of the United States, and is in itself a law in impairment of the obligation of the contract between your petitioner and plaintiffs, respondents and in violation and contravention of the Constitution of the United States and of the fourteenth amendment thereto.

XVII.

For all of which reasons and causes, as hereinbefore assigned and set forth, your petitioner most humbly and respectfully prays that its motion for a rehearing and a reargument of this cause be granted; that the judgment of affirmance herein be set aside, and that upon a rehearing of this case the judgment of the court below be reversed and judgment rendered for defendant corporation, your petitioner.

All of which is most respectfully submitted.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N, Y.,
Defendant, Petitioner,
By WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
CHESTER M. ELLIOTT,
T. H. SPAIN, *Its Attorneys.*

203 The Eastern Building and Loan Association of Syracuse, N. Y., hereby consents that the recall of the remittitur and the stay thereof shall be granted upon condition that the status of the property involved in this case shall not be disturbed until after the final determination of the case.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y.,
[SEAL.] By C. A. POOLER, *Sec'l'y & Gen'l Manager.*

I hereby certify that I am not concerned in this action and that there is merit in the grounds presented in this petition for rehearing.

U. X. GUNTER, JR.

It being conceded that the remittitur has been sent down to the circuit court, it has been frequently held that this court has thereby lost jurisdiction of the case; and for that reason we have no authority to consider the questions presented by this petition, and hence the petition must be dismissed. We may add, however, that even if we had jurisdiction to consider and determine these questions we do not think that there would be any ground for a rehearing.

It is therefore ordered that this petition be dismissed 10 January, 1900.

HENRY McIVER, *C. J.*
Y. J. POPE, *A. J.*
IRA B. JONES, *A. J.*

Supreme court of South Carolina. Clerk's office, Columbia, S. C. Filed 10 Jan., 1900. U. R. Brooks, clerk.

204 I, U. R. Brooks, clerk of the supreme court of South Carolina, do hereby certify that the foregoing are true, full, and correct copies of the "case," judgment, remittitur, and opinion rendered by the court in the case of Lawrence S. Welling and Marion Bonnoit against Eastern Building and Loan Association of Syracuse, New York, def't, appellant, and five other plaintiffs, respondents, against said defendant, appellant; also true and correct copies of the petition filed for rehearing and order of court refusing the same; all of which are now on file in my office; and I do further certify that the opinion rendered by the court in said case and the petition filed for rehearing and order refusing the same are parts of the record in said case.

Given under my hand and the seal of the court, at Columbia, this 10 day of January, in the year of our Lord one thousand nine hundred, and in the 124th year of the Independence of the United States of America.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

205 (*Original Citation.*)

UNITED STATES OF AMERICA, *ss:*

To Lawrence S. Welling and Marion Bonnoitt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of South Carolina, wherein Eastern Building and Loan Association of Syracuse, New York, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of January, in the year of our Lord one thousand nine hundred.

MELVILLE W. FULLER,
Chief Justice of the United States.

206 On this 24th day of January, in the year of our Lord one thousand nine hundred, personally appeared T. H. Spain before me, the subscriber, J. L. Michie, a notary public in and for the State of South Carolina, and makes oath that he delivered a true copy of the within citation to Lawrence S. Welling and also to Marion Bonnoitt, personally, at Darlington, South Carolina, on the 24th day of January, 1900.

T. H. SPAIN.

Sworn to and subscribed the 24th day of January, A. D. 1900.

[Seal of J. L. Michie, Notary Public, Darlington, S. C.]

J. L. MICHIE, *Not. Pub., S. C.*

We hereby acknowledge personal service of the within citation this 24th day of January, 1900.

LAWRENCE S. WELLING.
MARION BONNOITT.

Witness:
T. H. SPAIN.

207 (Internal-revenue stamp here.)

In the Supreme Court of the United States, October Term, 1899.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error (Defendant Below),
against
LAWRENCE S. WELLING and MARION BONNOITT, Defendants in Error (Plaintiffs Below).

Bond.

Know all men by these presents that we, Eastern Building & Loan Association of Syracuse, N. Y., a domestic corporation of the State of New York, as principal, and The United States Fidelity and Guaranty Company, a body corporate of Baltimore, Md., as surety, are held and firmly bound unto Lawrence S. Welling and Marion Bonnoitt in the full and just sum of five thousand ($5,000) dollars, to be paid to the said Lawrence S. Welling and Marion Bonnoitt or their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and our successors and assigns jointly by these presents.

Sealed with our seals and dated this 5th day of January, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court for the State of South Carolina, in a suit pending in said court between said Lawrence S. Welling and Marion Bonnoitt, plaintiffs, respondents,
208 against said Eastern Building & Loan Association of Syracuse, N. Y., defendant, appellant, a final judgment was rendered against the said Eastern Building & Loan Association of Syracuse, N. Y., and the said Eastern Building & Loan Association of Syracuse, N. Y., having obtained the allowance of a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Lawrence S. Welling and Marion Bonnoitt, citing and admonishing them to be and appear at the Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Eastern Building & Loan Association of Syracuse, N. Y., shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and effect.

[Eastern Co. Seal.]

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y.,
By JOHN L. KING, *President.*

Attest: C. A. POOLER, *Secretary.*

[Fidelity Co. Seal.]

THE UNITED STATES FIDELITY & GUARANTY CO. OF BALTIMORE, MD.,
By GEO. F. McKEOUGH, *Attorney-in-fact.*

Approved to operate as a supersedeas.

(Signed) MELVILLE W. FULLER,
Chief Justice of the United States.

209 Statement of the United States Fidelity and Guaranty Company, rendered to the Department of Justice, Washington, D. C., at the close of business, September 30th, 1899; commenced business August 1st, 1896.

Assets.

Investments, stocks & bonds (market value)	$1,095,955.08
Collateral loans	444,056.25
Real estate	63,602.56
Cash on hand and in banks	317,164.88
Loans secured by mortgages	40,525.64
Advances on real estate secured by deeds	27,616.38
Furniture and fixtures	100.00
Agents' balances, less commissions	115,335.72
Mercantile and attorneys' subscriptions in course of collection	16,917.77
Interest, due and accrued	12,613.66
	$2,133,887.94

Liabilities.

Capital stock paid in cash	$1,500,000.00
Cash on deposit, held as security for risks	52,145.31
Surplus and reinsurance reserve	581,742.63
	$2,133,887.94

[Corporate Seal of the U. S. Fidelity and Guaranty Company.]

GEO. R. CALLIS, *Secretary.*

STATE OF MARYLAND, } ss:
City of Baltimore, }

On this 23 day of Nov., A. D. 1899, before me, the undersigned, a notary public in and for the city and State aforesaid, appeared
210 George R. Callis, secretary of the United States Fidelity and Guaranty Company, who, being by me duly sworn, did depose and say that he is an officer of said company, and that the above and foregoing is a true and correct statement of the assets and liabilities of said company as they appear upon the books of the said company.

——.

Subscribed and sworn to before me the day and year aforesaid.

ARTHUR C. PIERCE,
Notary Public.

[NOTARIAL SEAL.]

211 CITY OF SYRACUSE, } ss:
County of Onondaga, State of New York, }

On this 4th day of January, 1900, before me personally appeared Geo. F. McKeough, attorney-in-fact of the United States Fidelity and Guaranty Company, a corporation created and existing under and by virtue of the laws of the State of Maryland and duly authorized to transact business in the State of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of Syracuse, N. Y.; that he is the attorney-in-fact of the United States Fidelity and Guaranty Company; that he knew the corporate seal of said company; that the seal affixed to the annexed instrument is such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that he signed said instrument as attorney-in-fact of said company by like authority; and the said Thos. O'Donnell further said that he is acquainted with said Geo. F. McKeough and knew him to be the attorney-in-fact of said company, and that the signature of the said Geo. F. McKeough subscribed to the said instrument is the genuine handwriting of the said Geo. F. McKeough and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Thomas O'Donnell.

THOMAS O'DONNELL, [NOTARIAL SEAL.]
Notary Public.

At a meeting of the board of directors of the United States Fidelity and Guaranty Company held at the office of the company in the city of Baltimore, State of Maryland, on the 19th day of January, A. D. 1899, at which was present a quorum of said directors duly authorized to act in the premises, on motion it was unanimously—

Resolved, That in pursuance of section 811 of the Code of Civil Procedure of the State of New York James K. McGuire, Geo. F. McKeough, and Thomas Hogan, the attorneys-in-fact of the United States Fidelity and Guaranty Company for the county of On-
212 ondaga, in the State of New York, be, and each of them is hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for and on behalf of this company and to attach thereto the seal of the company, the same to be attested by either one of the said attorneys-in-fact above named as occasion may require.

CITY OF BALTIMORE, } ss:
County of ——, State of Maryland, }

I, Geo. R. Callis, secretary of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at Baltimore, Md., this 27th day of November, 1899.

[Corporate Seal of the U. S. Fidelity & Guaranty Company.]

GEO. R. CALLIS, *Secretary.*

213 STATE OF NEW YORK, } ss:
County of New York, }

On this 4th day of January, 1900, before me, a notary public in and for the aforesaid county, personally appeared John L. King, to me known and known to me to be the person who executed the foregoing instrument on the part of Eastern Building and Loan Association, and who acknowledged that he executed the same.

[SEAL.] JULIA AKERS,
Notary Public, New York County, N. Y.

STATE OF NEW YORK, }
County of Onondaga. }

On this 4th day of January, 1900, before me, a notary public in and for the aforesaid county, personally appeared Geo. F. McKeough, to me known and known to me to be the person described in and who executed the foregoing instrument on the part of the United States Fidelity and Guaranty Company, and who acknowledged that he executed the same.

THOMAS O'DONNELL, [NOTARIAL SEAL.]
Notary Public.

214 [Endorsed:] (Copy of bond.) Eastern Building & Loan Association of Syracuse, N. Y., to —— ——. Russell & Winslow, office copy, 13. Eastern Building and Loan Association of Syracuse, N. Y.

215 (To be attached to and sent up with certified record by clerk of supreme court of South Carolina. R. & W.)

In the Supreme Court of the United States, October Term, 1899.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error (Defendant Below),
against
LAWRENCE S. WELLING and MARION BONNOITT, Defendants in Error (Plaintiffs Below).

Assignment of Errors.

Comes now The Eastern Building & Loan Association of Syracuse, New York, plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and judgment of the supreme court of South Carolina in the above-entitled cause and assigns error thereto as follows:

1. The supreme court of South Carolina erred in refusing to give full faith and credit to the public acts, records, and judicial decisions of the State of New York plead and given in evidence by the plaintiff in error and in denying the rule of constitutional obligation established by section 1 of article LV of the Constitution of the

United States and section 905 of the Revised Statutes of the United States.

2. The supreme court of South Carolina erred in its construction of the contract obligations between plaintiff in error and defendants in error, in this: that by its refusal to consider and pass upon the contract obligations of defendants in error to plaintiff in error entered into in the State of New York under the laws of that
216 State it impaired the obligation of a contract between the parties, refused full faith and credit to the public acts, records, and judicial proceedings of the State of New York, and deprived defendant of its property without due process of law.

3. The supreme court of South Carolina erred in the application to the plaintiff in error (defendant below) of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and erred in changing the settled construction of said statutory provisions, whereby it impaired the obligation of the contract between defendants in error and the plaintiff in error, denied the plaintiff in error the equal protection of the laws of South Carolina and deprived it of its property without due process of law.

4. The supreme court of South Carolina erred in holding that the laws of New York were not binding upon the courts of South Carolina and did not enter into, govern, and control the construction of the mortgage executed by defendants in error to plaintiff in error, so far as the obligations of defendants in error as members of and stockholders in plaintiff in error are concerned, and by such holding and decision the court erred in refusing full faith and credit to the public acts, records, and judicial proceedings of the State of New York and impaired the obligation of the contract between defendants in error and plaintiff in error.

5. The supreme court of South Carolina erred in holding that the mortgage executed by defendants in error to plaintiff in error was discharged and paid, and that the plaintiff in error was subject to the penalty provided by sections 1894 and 1895 of the Revised
217 Statutes of South Carolina of 1893, because such holdings and decision rest solely upon the refusal of said court to give full faith and credit to the public acts, records, and judicial proceedings of the State of New York, and have the effect of changing the settled construction of said statutory provisions so as to impair the obligation of the contract between the defendants in error and the plaintiff in error, and apply such statutory provisions to a mortgage not discharged or paid, and to a case not contemplated by the words of the statute and not within the scope and meaning of the prior decisions of the supreme court of South Carolina, interpreting and applying said statutory provisions.

6. The supreme court of South Carolina erred in changing the settled construction of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and in applying them to a case where the payment and discharge of a mortgage was controverted and denied by the mortgagee, and in which the mortgage itself was only an element or incident to the contract obligations existing between the defendants in error and the plaintiff in error, such con-

tract obligations arising under and being controlled by the public acts, laws, and judicial decisions of the State of New York.

7. The supreme court of South Carolina erred in refusing to give full faith and credit to the public acts, records, and judicial proceedings of the State of New York and to the contract entered into between plaintiff in error and defendant in error in the State of New York and under and pursuant to the laws thereof, and by its decision, opinion, and judgment in said case the supreme court
218 of South Carolina, in contravention of the Constitution of the United States, impairs the obligation of the contract between plaintiff in error and defendants in error, and said decision, opinion, and judgment of the supreme court of South Carolina are erroneous in this, that they establish a rule of law impairing the obligation of contracts and depriving plaintiff in error of its property without due process of law.

8. The supreme court of South Carolina erred in holding and deciding that "whatever may be the laws of New York, we do not think they should be enforced in this State."

Wherefore the said Eastern Building and Loan Association, plaintiff in error, prays this honorable court to examine and correct the errors assigned and for a reversal of the judgment of the supreme court of South Carolina entered in the said case of Lawrence S. Welling and Marion Bonnoitt, plaintiffs, respondents, against Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant, as aforesaid.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Plaintiff in Error,

By WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
Its Attorneys.

CHESTER M. ELLIOTT,
T. H. SPAIN,
RUSSELL & WINSLOW, *Of Counsel.*

[Endorsed:] Supreme court of South Carolina. Clerk's office, Columbia, S. C. Filed 23 Jan., 1900. U. R. Brooks, clerk.

219 (*Original Writ.*)

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between

Eastern Building and Loan Association of Syracuse, New York, appellant, and Lawrence S. Welling and Marion Bonnoitt, respondents, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the
220 construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of January, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
MELVILLE W. FULLER,
Chief Justice of the United States.

221 I, U. R. Brooks, clerk of the supreme court of South Carolina, do hereby certify this to be a true, full, and complete copy of the record of the case of Lawrence S. Welling and Marion Bonnoitt, plaintiffs, respondents, against Eastern Building & Loan Association of Syracuse, New York, defendant, appellant, which is now on file in my office; and I do further certify that the opinion rendered by the court in said case, petition for rehearing, & order dismissing same are parts of the record of said case.

I do further certify that the original writ of error granted by Chief Justice Fuller, of the U. S. Supreme Court, on the 18th day of January, 1900, a copy of which is now on file in my office, and the assignment of errors thereon, and the original citation & a copy of the supersedeas bond, the original being now on file in my office, are hereunto attached.

Given under my hand and the seal of the supreme court of South

Carolina, at Columbia, this 26 day of January, in the year of our Lord one thousand nine hundred and in the 124th year of the Independence of the United States of America.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

Endorsed on cover: File No., 17,620. South Carolina supreme court. Term No., 190. Eastern Building & Loan Association of Syracuse, N. Y., plaintiff in error, *vs.* Lawrence S. Welling & Marion Bonnoitt. Filed January 27th, 1900.

Supreme Court of the United States,

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Plaintiff in Error,

vs.

LAWRENCE S. WELLING and MARION BONNOITT,
Defendants in Error.

No. 17,620.

Statement of the Case.

The facts of this case, shown by the record, and which we deem material to the questions involved, are as follows:

1. Plaintiff in error (defendant below) is a corporation organized under the laws of the State of New York in 1890, with its corporate *situs* and principal place of business in Syracuse, New York.

Articles of Incorporation, Transcript, pp. 21, 26, 27.

2. The corporation was organized under Chapter 122 of the Laws of New York of 1851, as amended by Chapter 564 of the Laws of New York of 1875,

and both of these statutes were given in evidence and appear in the record in this case.

Transcript, pp. 67–71, 71–74.

3. The articles of incorporation (the corporate charter) were given in evidence and appear in the record.

Transcript, pp. 21–28.

4. The by-laws of the corporation were also given in evidence and appear in the record.

Transcript, pp. 28–38.

5. The decision and opinion of the Supreme Court of New York, General Term, in the case of *O'Malley v. People's B. & L. Assn.*, reported in 92 Hun. (N. Y.), 572, was also formally given in evidence upon the trial in behalf of the corporation.

Transcript, pp. 74–78.

6. The decision and opinion of the Court of Appeals of New York in *Englehardt v. Fifth Ward Savings & Loan Assn.* (148 N. Y., 281), was given in evidence and the point as to which it was relied upon was condensed and stated in the record upon appeal to the Supreme Court of South Carolina, as shown in the record in this court as follows:

"In the case of *Englehardt* v. *Fifth Ward Dime Savings and Loan Assn.*, reported 148 N. Y., at page 281, it was held that the articles of association, which showed the scheme of the organization and defined the obligations of the association and the rights of members, are binding upon each member thereof. They establish the relation between the association and the stockholders and constitute a contract between them."

Transcript, p. 78.

7. The decision and opinion of the Court of Appeals of New York in *People* v. *Lowe* (117 N. Y.,

175), was given in evidence in behalf of the corporation and appears in the record.

Transcript, pp. 78–85.

8. In like manner, the case of *Concordia Savings, &c., Assn.* v. *Read* (93 N. Y., 474), was given in evidence in behalf of the corporation.

Transcript, pp. 85–87.

9. D. A. Pierce, an attorney at law, residing in Syracuse, New York, practicing in that State since 1884, and showing himself to be specially familiar with the laws of New York in relation to building and loan associations, testified as a witness and stated in detail the law of New York in relation to building and loan associations, their relations to and contracts with their members and the decisions of the New York Courts construing the laws of New York in relation to such associations and the status of their members. The testimony of Mr. Pierce is important and material as it appears in the record. Upon particular points it will be referred to more specifically later on in this statement, but at this time we direct the attention of the Court to the matter because it makes quite clear most of the issues arising in this case.

Transcript, pp. 61–65.

10. Plaintiff in error is a purely mutual association, having no fixed or paid in capital stock apart from the contributions of its members, all of whom occupy the same *status* in relation to the association and each other, their rights, duties and obligations being equal, mutual and reciprocal.

Transcript, p. 21, Articles of Incorporation, par. II.; p. 24, par X; p. 25, par XV;

Transcript, p. 28, By-Laws; p. 32, By-Laws, Art. XIV, § 1; p. 34, By-Laws, Art. XIV, pp. 13, 14; p. 35, By-

Laws, Art. XIV, § 21; p. 35. By-Laws, Art. XV, §§ 1, 2.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281, 284.
People *ex rel.* Fairchild *v.* Preston, 140 N. Y., 549, 554.
House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.

10. In such an association the members constitute the corporation in the strictest sense of the term, and in contracting membership individually they contract with themselves collectively, and no one member has or can obtain, through the contract of membership, any preference or priority over another that violates the principle of mutuality. The provisions of the articles of association and by-laws are binding upon all the members, and when adopted or amended by them collectively cannot be questioned or their operation denied by individual members. These associations are *quasi* partnerships and are dealt with by the courts as such.

1 Morawetz on Corp. (2nd ed.), §§ 1, 45, 54.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.
Tilly *v.* American B. & L. Assn., 52 Fed. Rep., 618, 622.
Robertson *v.* Homestead Assn., 10 Md., 397; s. c., 69 Am. Dec., 145.
Thompson on Building Assns. (2d ed.), §§ 3, 4.

Such being the nature of the Eastern Building and Loan Association, the plaintiff in error, we direct attention to the following specific facts out of which this litigation arises:

11. Defendants in error, copartners under the firm name of Welling & Bonnoitt, being citizens and residents of the County of Darlington, State of

South Carolina, on January 28, 1891, made formal written application to the plaintiff in error for fifty shares of the regular instalment stock issued by plaintiff in error. In the formal application for shares, defendants in error agreed "to abide by all the terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said association."

Transcript, pp. 46–47, Application for Shares.

12. At the time this application for stock was made to the plaintiff in error, Welling, one of the defendants in error, was the local agent of the association at Darlington, South Carolina, and as such was familiar with the nature of the corporation and its plan of operations.

Transcript, pp. 13, 14.

13. The application for shares was made through one Carpenter, the general agent of the plaintiff in error, who was at that time at Darlington, South Carolina, and was by him transmitted to the home office of the plaintiff in error at Syracuse, New York, for acceptance, and the issue of the certificate for the subscribed stock.

Transcript, pp. 10, 46, 47, 55, 56, deposition of C. A. Pooler.

14. The application for shares was received and accepted by plaintiff in error at its home office in Syracuse, New York, and a stock certificate issued there to the defendants in error as partners on February 2, 1891.

Transcript, pp. 47, 48, 49.

15. The stock certificate provides that "in consideration of the membership fee, together with agreements and statements contained in the application for membership in the association and full

compliance with the terms, conditions and by-laws printed on the front and back of the certificate, which are hereby referred to and made a part of this contract, the said Eastern Building and Loan Association of Syracuse, N. Y., agrees to pay said shareholders, or their heirs, executors, administrators or assigns, the sum of $100 for each of said shares at the end of seventy-eight months from the date thereof."

Transcript, p. 47.

Payments under the certificate "are payable at home office of the association at Syracuse, New York" (Transcript p. 47, side p. 88, "Certificate").

16. Further on in said certificate the following express provisions are set forth, to wit:

"This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

"*First.* The shareholder agrees to pay, or cause to be paid, a monthly instalment of seventy five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month, *until such share matures or is withdrawn.* * * *

"*Sixth.* At stated periods the profits arising from interest, premiums, fines and other sources shall be apportioned among the shares in good standing.

"*Seventh.* All payments must be made to an authorized agent or sent to the Secretary at the home office by draft, express or money order or registered letter." * * *

"*Ninth.* The by-laws of this association, which are attached to and endorsed hereon are a part of this contract, and such by-laws and this certificate are to be construed together as part of the contract between the association and the shareholders. * * *

"*Fourteenth.* Any action brought against this association shall be commenced within six months after filing proof and *in the County of Onondaga and State of New York.*

"*Fifteenth.* No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature."

Transcript, pp. 47–49.

17. The by-laws of the plaintiff in error were printed in full upon the certificate of stock issued to the defendants in error, and we direct the attention of this Court particularly to the following articles and sections of these by-laws, namely:

Art. XIV., § 1, Transcript, p. 32;
Art. XIV., §§ 13, 14, Transcript, p. 34;
Art. XIV., § 21, Transcript, p. 35;
Art. XV., §§ 1, 2, Transcript, p. 35.

18. And in this connection we also direct the attention of the Court to certain material provisions of Chapter 122, Laws of New York of 1851, under which plaintiff in error was incorporated.

Laws of New York, 1851, Chapter 122,
§§ 4, 7, 11, Transcript, pp. 67, 68, 69.

19. On or about the 6th day of April, 1891, defendants in error applied to plaintiff in error, at its home office in the City of Syracuse, New York, for a loan or advance of the par or maturity value of the shares subscribed for by them, to wit, the sum of $5,000, such application being made in writing in accordance with the rules and regulations and the by-laws of plaintiff in error.

Transcript, pp. 49, 50, Exhibit "G."

20. The application for a loan agrees to give a mortgage on the real estate described in the application itself, being the same property subsequently

mortgaged by defendants in error to plaintiff in error.

Transcript, p. 49, Exhibit "G."
Transcript, pp. 36, 37, Exhibit "C."

21. The said application for a loan or advance was submitted to the directors of plaintiff in error at the corporate *situs* at Syracuse, New York, and subject to the execution of the papers and the giving of the proper mortgage security, was granted by the said Board of Directors.

Transcript, pp. 56, 57, deposition C. A. Pooler.

22. The terms and conditions upon which the loan or advance to the defendants in error was to be made are fully set forth and shown in the deposition of C. A. Pooler.

Transcript, pp. 57, 58.

23. After defendants in error received notice that their application for a loan or advance had been granted, they then formally applied for the advance or payment of the money to them by a letter written on or about June 6, 1891, such letter appearing in the transcript as Exhibit "S," and being headed "Application for an Advance."

Transcript, pp. 65, 65.

24. The substance of this letter of application is as follows:

"Having obtained the preference for an advance on fifty shares * * * of your association at a premium of ten per cent., I now respectfully request the advance be granted. *I hereby agree to comply with the charter and by-laws of your association and all requirements defined by your committee of the Board of Directors.*"

Transcript, p. 65.

25. The defendants in error executed and delivered their notes and mortgage to the plaintiff in error, as appears from the transcript; such delivery of the notes and mortgage and the stock certificate assigned as collateral being made to plaintiff in error at Syracuse, New York, *concurrently* with the transmission of the letter of application last above quoted from.

Transcript, pp. 36-38, Mortgage; Transcript, p. 39, Notes; Transcript, pp. 62, 63, deposition D. A. Pierce.

26. Plaintiff in error then accepted the papers at Syracuse, advanced to defendants in error the sum of $5,000, less $500, the gross premium bid, and agreed to be paid by them as a preference for the loan so that they actually received from the plaintiff in error, in cash, the sum of $4,500, which, together with the $500 gross premium deducted, represented an advance to them of the full par or maturity value of their shares, such advance being made in strict accordance with the Articles of Incorporation and by-laws of the plaintiff in error.

Transcript, pp. 62, 63, Deposition, D. A. Pierce.

Transcript, p. 24, Articles of Incorporation, Art. X.

Transcript, pp. 32, 34, By-laws, Art. XIV., §§ 1, 13, 14.

Transcript, p. 35, By-laws, Art. XV., § 2.

27. The mortgage executed by the defendants in error to the plaintiff in error, while securing the payment of the 78 notes executed by the defendants in error and described in the mortgage, was in fact and in contemplation of law also a mortgage to secure the payment of dues or calls upon the stock subscribed for by defendants in error, and the par or maturity value of which was advanced to them by the plain-

tiff in error upon the pledge of the stock itself coupled with the security of the mortgaged real estate. The seventy-eight notes mentioned in the mortgage were an advance estimate of the amount that would have to be paid and the number of payments that would be required in order to mature the stock of the defendants in error, and through such maturity secure the cancellation of the mortgage and the discharge of the obligations of the defendants in error to the plaintiff in error, the stock to be likewise canceled at its maturity, so that the stock would then be set off against the advance made upon it, the premium and interest paid upon the advance going into the general funds of the corporation as a part of the corporate profits in which defendants in error, along with all other stockholders in plaintiff in error, were entitled to share and participate. The mortgage itself shows that this was the real understanding of the parties, and that they contracted with reference to the laws of New York and the articles of incorporation and by-laws of the plaintiff in error. This is clearly shown by a covenant in the mortgage which requires defendants in error to "*also keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association.*"

Transcript, p. 37, side page 68.

The defeasance clause in the mortgage was conditioned not merely upon the payment of the notes, but also upon the performance of the other covenants. It reads, "And this conveyance shall be void if full payment or the aforesaid moneys, both principal and interest, be made as hereinbefore specified, and *if the aforesaid covenants and each of them be well and truly kept and performed as herein specified and provided.*"

Transcript, p. 38; side p. 70.

28. That such was the contract and understanding of the parties is manifest from the amounts for which the several notes secured by the mortgage are drawn. The first seventy-~~five~~ notes are each for $79.20, the last three notes are each for $41.70 (Transcript, p. 39). Under their contract of membership and their stock subscription, defendants in error were required to pay monthly dues or calls on their fifty shares of stock, amounting to $37.50 (Transcript, p. 37, deposition C. A. Pooler), and under the laws of New York and articles of incorporation and by-laws of plaintiff in error these payments of monthly dues or calls were to continue until such time as the stock attained its par or maturity value; *first*, by reason of the sums paid in as dues or calls, and, *second*, from any profits apportioned to the stock; but, of course, if no profits were earned, payments of dues were required to be made until by such payments the stock became fully paid.

Transcript, pp. 68, 69, 71, Laws of New York (1851), Ch. 122, §§ 4, 7, 11, 20; also Laws of New York, Ch. 564, § 1, Transcript, pp. 71, 72.

Transcript, pp. 23, 24, 25, Articles of Incorporation, Arts. IX., X., XV.

29. In addition to the $37.50 dues or calls required to be paid by defendants in error until the maturity of their stock as above stated, they obligated themselves to pay, by way of monthly interest and premium upon the advance to them, the sum of $41.70, this monthly premium and interest payment when added to the monthly payment of dues, amounting, as will be readily seen, to $79.20, exactly representing the amount for which each of the first seventy-five notes was drawn. It will be noted that under the By-laws and Articles of Incorporation of plaintiff in error, defendants in error were required to be members and make payments of dues for three months before they could apply for and obtain an ad-

vance upon their shares (By-laws, Art. XV., § 2, Transcript, p. 35). Therefore, at the time the advance was made to defendants in error, they had made three monthly payments of $37.50 each by way of dues upon their stock subscription, and, as it was *estimated* when the advance was made and the mortgage executed that the stock would mature, and the advance be thereby repaid, in seventy-eight months from the date of the advance, defendants in error were only required by the terms of the mortgage and the notes executed thereunder to make payment of dues for seventy-five additional months, the last three notes out of the seventy-eight being for but $41.70 each (Transcript, p. 39) and representing only payments of premium and interest, which, according to the estimated date of maturity of stock would be all that would be required to be paid by the defendants in error on the assumption that the stock itself would have matured at the expiration of the seventy-eight months' period. This whole matter is clearly explained by the testimony of the witnesses Pooler and Pierce.

Deposition C. A. Pooler, Transcript, pp. 56, 57, 58, 59, 60.

Deposition D. A. Pierce, Transcript, pp. 61, 62, 63, 64.

30. The controversy between the defendants in error and the plaintiff in error in the State court of first instance, and in a more pronounced form in the Supreme Court of South Carolina, was whether the contract in question was governed by and to be construed under the laws of New York, and in accordance with the judicial decisions of that State, or whether it could be construed independently thereof, and according only to the language of the mortgage itself, without reference to the articles of incorporation and by-laws of the plaintiff in error and the laws and judicial decisions of the State of New York.

In this connection it was contended by the

defendants in error that the stock certificate and mortgage together stated a definite contract under which plaintiff in error had *guaranteed* the maturity of its stock, and the consequent discharge of the mortgage at the expiration of a period of seventy-eight months, and the insistence was that even if this contention was not in accordance with the laws of New York, yet it was in accordance with the laws of South Carolina, and, therefore, that it should be held that the mortgage had been fully paid and discharged and made subject to cancellation by the payment of seventy-five notes for $79.20 each and the payment or tender of payment of the last three notes of $41.70 each. In support of this contention defendants in error relied upon a pamphlet issued by plaintiff in error and which the defendants in error, as plaintiffs below, gave in evidence upon the trial. That pamphlet, marked Exhibit "D" and headed "The Definite Contract Plan," appears in full in the transcript (Transcript, pp. 39-46). As this pamphlet will doubtless be referred to and relied upon in this Court, we now direct attention to the following quotations therefrom:

"Q. What is the Eastern Building and Loan Association?

"A. It is in the nature of a co-operative bank *in which the members are equal partners, and the deposits are loaned only to the shareholders.*"

Transcript, p. 40, par. 74.

"Q. How often are the profits divided?

"A. Only when stock matures and reaches its par value.

"Q. *What is the meaning of stock maturity?*

"A. *When the amount deposited, together with accumulated profits amounts to $100 on each share.*

"Q. What amount is deposited monthly?

"Seventy-five cents per share."

Transcript, p. 40, par. 74

"Q. When will the shares reach their par value?

"A. Shares mature in exactly six and one-half years. * * *

"Q. What is the object of this Association?

"A. The main object is to assist each other in saving money and having what that amount earns."

Transcript, p. 41.

"PLAN. The capital stock of the Eastern Building and Loan Association is divided into shares of $100 each par value at maturity. Any person, male or female, may become a shareholder and may apply for two or more shares. All shares on which payments are made are regularly matured at the expiration of the seventy-eight months (6½ years) from date of certificate. * * *

"LOANS. The money accumulated in the loan fund is loaned to the first approved application from a member. Loans can be made only to members. All loans must be amply secured by first mortgage real estate security. Loans will only be made upon shares that are three months old, and in good standing. *For illustration*, suppose a party owns a town lot worth four hundred dollars or upwards, and after he becomes a shareholder desires to borrow one thousand dollars with which to build a home, and he has ten shares of one hundred dollars each, amounting to one thousand dollars. When the shares are three months old or more, he can make application for a loan on blanks furnished by the association, which he fills out, offering a first mortgage on his lot, and the improvements to be made thereon with the money so borrowed. If the association, through its directors, on inspecting his application, finds that the security offered is sufficient, and that all is as represented, and all the requirements have been complied with, his application will be approved, and he will be entitled to the next loan; but, should there be several ahead of him, he will take his regular turn, as all applications for loans are taken up in their regular order.

"All interest and premiums are payable monthly at the time of paying monthly instalments.

"This association has no auction system, whereby some members are inveigled into paying large premiums, but all members pay alike for money borrowed and take their regular turns in receiving loans.

"*Illustration.*

"Showing costs and profits to the investor of ten shares of $1,000 in six and one-half years, at time of maturity:

"He pays a membership fee of $1.00 per share	$10 00
"He pays monthly instalments of $7.50 per month for 78 months, $7.50 × 78	585 00
"Total amount invested	$595 00
"He receives in cash at maturity	1,000 00
"His net gain is	$405 00

"*Illustration.*

"Showing the cost of $1,000 loan on ten shares of stock for six and one-half years:

"He bids ten per cent. ($100), which is deducted from the $1,000 borrowed.

"He pays $15.84 per month for 78 months	$1,235 52
"He paid for stock	10 00
"Total	$1,245 52

"It will be seen from the above that $345.52 is the amount paid in excess of the actual amount received on loan. This for the use of the money for six and one-half years. Thus the borrower pays less than six per cent. per annum.

"He also pays $10 attorney's fees for examining title."

Transcript, pp. 42, 43.

31. Having consummated their "advance" in the manner stated, defendants in error paid the first seventy-five notes secured by the mortgage as they severally matured, each for the sum of $79.20.

Transcript, p. 7.

But did not pay the last three notes for $41.70 each, although it is admitted that they tendered payment of such notes which the plaintiff in error refused to receive, because such tender was made conditioned upon the release and discharge of the mortgage executed by defendants in error without regard to the fact that the stock had not matured, or been fully paid by defendants in error.

Transcript, pp. 7, 8, 14, 18, 19, 20, Dep. L. S. Welling.

Transcript, pp. 50-54, Exhibits H-R, inclusive.

32. The plaintiff in error refused to accept payment of the last three notes for $41.70 each, because those notes represented only the monthly premium and interest upon the "advance" to defendants in error, and did not include the payments of dues or calls upon their stock, and the stock not having matured in the estimated period of seventy-eight months, a continuance of the payments by way of dues was required by the express provisions of the laws of New York and the articles of incorporation and by-laws of plaintiff in error.

Laws of N. Y., 1851, Ch. 122, §7, Transcript, pp. 68, 69.

Laws of N. Y., 1875, Ch. 564, § 1, Transcript, pp. 71, 72.

Articles of Incorporation, Art. X., Tr., p. 24.

By-Laws, Art. XIV., §§ 13, 14, Transcript, p. 34.

That such payment of dues was an obligation assumed by the defendants in error at the time of the

advances to them, the mortgage itself clearly shows by binding the mortgagors to "keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association."

Transcript, p. 37, Mortgage; see also p. 38, par. 69.

33. The undisputed evidence shows that the stock of defendants in error had not matured nor been fully paid at the expiration of the seventy-eight months' period, nor had it matured when action was begun, as hereinafter shown, by defendants in error against plaintiff in error in the State courts of South Carolina.

Transcript, p. 58, Dep. C. A. Pooler, Ints. 46, 47, and answers.

That the stock had not matured, and, therefore, that the payments of dues or calls must continue until the maturity of the stock, plaintiff in error informed and advised defendants in error on August 28, 1897, by a letter fully and clearly stating the situation.

Transcript, p. 50, Exhibit "I."

And defendants in error were informed that payment of the last three notes for $41.70 could not be accepted by plaintiff in error as payment in full and the lien of the mortgage be released.

Transcript, p. 51, Exhibit "K," and subsequent correspondence, Exhibits "L"–"R," pp. 52–54.

But, on the contrary, they were advised that they must continue making payments of dues, interest and premium, amounting to $79.20 per month, until their stock should attain its maturity value of $100 per share, or $5,000 in the aggregate, at which

time the stock would be canceled and the mortgage released.

"Q. They advised you when you sought to pay those notes that they did not pay up what they claimed to be the amount of the balance of your indebtedness to the association?"

"Ans. That is what they claimed."

"Q. And they informed you that your shares of stock had not reached maturity or par value?

"Ans. Yes."

Transcript, p. 11, Ev. L. S. Welling.
Transcript, p. 50, Exhibit "I."
Transcript, p. 19, par. 33, Ev. L. S. Welling, Recross Ex.

Thereupon defendants in error made no further attempt to keep up their payments or mature their stock, but, on the contrary, refused to make any further payments of dues or calls upon their stock, defaulted in such payments and contented themselves with tendering payment of the three premium and interest notes for $41.70 each and demanding a release and discharge of their mortgage, which tender and demand plaintiff in error refused and declined to comply with.

Transcript, pp. 19, 20, Ev. L. S. Welling.
Transcript, pp. 52–54, Exhibits "L"-"R."

At the time when the defendants in error declined and refused to make further payments of dues or calls on their stock they had only made seventy-eight monthly payments of $37.50 each upon their stock subscription for fifty shares of the par value of $5,000, so their payments amounted in the aggregate to but $2,925, while the profits or dividends credited to their stock up to the time of action brought amounted to $199.50, so that the total book value of their stock at the time they demanded that it should be

treated as matured at its par value was $3,121.50, and not $5,000, its par or maturity value.

Transcript, pp. 58, 59, Dep. C. A. Pooler, Ints, 47-52 and answers.

In short, the business had not proven as profitable as had been estimated when the corporation was organized in 1890; its stock had not matured in seventy-eight months; and the association and its officers were without power or authority to mature stock except from earnings or to release shareholders from their obligations except in accordance with the Articles of Incorporation and by-laws and the laws of New York.

Laws of N. Y. 1851, Ch. 122, §§ 4, 7, 11, 20; Laws of N. Y. 1875, Ch. 564, § 1; Transcript, pp. 67, 68, 69, 71, 72.

Articles of Incorporation, Arts. X., XV., Transcript, pp. 24, 25.

By-Laws, Art. XIV., §§ 1, 3, 10, 13, 14, Transcript, pp. 32, 33, 34.

34. On this state of facts the action in this case was begun by the defendants in error, as plaintiffs, against the plaintiff in error, as defendant, in the Court of Common Pleas of Darlington County, South Carolina, on January 15, 1898.

Transcript, p. 2.

The nature and character of the action, and the *Federal questions* arising in connection therewith which give this Court jurisdiction, will be made apparent by the following *résumé* of the proceedings in the State courts.

35. In 1817 the Legislature of South Carolina enacted a statute, which ever since has been in force and effect, having been carried into all subsequent revisions of the statutes of that State, and being now embodied in the Revised Statutes of South Carolina of 1893, as Sections 1894 and 1895.

Said Sections are as follows:

"Sec. 1894. Any person who shall have received full payment or satisfaction, or to whom a legal tender shall have been made of his debt, damages, costs and charges, secured by mortgage of real estate, shall, at the request of the mortgagor, or of his legal representatives, or of any other person being a creditor of the said debtor or a purchaser under him, or having an interest in any estate bound by such mortgage, and on tender of the fees of office for entering such satisfaction within three months after such request made, enter satisfaction in the proper office on such mortgage, which shall forever thereafter discharge and satisfy the same.

"Sec. 1895. Any person having received such payment, satisfaction or tender as aforesaid who shall not, within three months, by himself or his attorney, after request and tender of fees of office repair to the said office and enter satisfaction as aforesaid, shall forfeit and pay the party aggrieved a sum of money not exceeding one-half of the amount of the debt secured by mortgage as aforesaid, to be recovered by action in any court of competent jurisdiction within the State; and on judgment being rendered for the plaintiff in such action, it shall be the duty of the presiding Judge to order satisfaction to be entered on the judgment or mortgage aforesaid by the Clerk or Register or other proper officer, whose duty it shall be, on receiving such order, to record same and to enter satisfaction accordingly."

36. Basing their right of action on these statutory provisions, defendants in error brought their action against plaintiff in error to recover the statutory penalty and to secure the release and discharge of record, in the manner provided by the statute, of the mortgage executed by defendants in error to plaintiff in error, the contention being that by the payment of the seventy-five notes for $79.20 each and the tender of payment of the last three notes for $41.70 each, the mortgage was discharged and the obligations secured by it fully paid.

Transcript, pp. 2-4, "Complaint."

37. To the complaint based on the theory and statutes just stated, plaintiff in error (as defend-

ant) interposed an answer wherein it plead its incorporation under the laws of New York and specifically plead and relied upon the laws of New York of 1851 and 1875, already frequently adverted to, its articles of incorporation and by-laws, and the judicial decisions of the State of New York construing the New York statutes in question.

Transcript, pp. 4-7; Answer, par. Fourth.

38. It will be noted that the complaint alleges the incorporation of plaintiff in error under the laws of New York as a building and loan association (Transcript, p. 2), and then particularly avers that the loan to defendants in error "*was made pursuant to the by-laws of the said defendant association.*"

Transcript, p. 3.

It is then alleged that the notes and mortgage have been fully paid "in accordance with the terms, stipulations and conditions of the said notes, mortgage, *and the by-laws* of said defendant association."

Transcript, p. 3.

Then the demand for a release of the mortgage, as "paid" within the meaning of the foregoing statutory provisions, is alleged, the refusal to release is shown, and judgment is demanded for the penalty imposed by the statute in the sum of $1,800, with costs.

Transcript, pp. 3, 4.

The answer of plaintiff in error (as defendant below) sets up not only the laws of New York but the true contract between the parties under those laws and the articles of incorporation and by-laws of plaintiff in error, denies that the obligations secured by the mortgage have been paid and sets up specifi-

cally the remaining and unpaid indebtedness of defendants in error to plaintiff in error.

Transcript, pp. 4, 5, 6; Answer, par. "Fourth."

39. On the issues thus joined the case went to trial and on the trial defendants in error as plaintiffs gave in evidence the articles of incorporation and by-laws of plaintiff in error (Transcript, p. 7), while plaintiff in error as defendant, gave in evidence the laws of New York of 1851 and 1875, and several opinions and decisions of the courts of New York, construing and applying such laws.

Transcript, pp. 62-64, Dep. D. A. Pierce; and pp. 66-67, Exhibit "V"; 78-85, Exhibit "W"; 85-87, Exhibit "X".

40 Upon the trial it was conceded and agreed that *no* question of *fact* was in dispute and: "The attorneys for the plaintiffs and defendant admit the same state of facts, *including the laws* of the State of New York * * * and agree as there is *no fact to be found by the jury*, that his Honor can direct a verdict for the plaintiff or defendant" as he construes the law. And each side requested instructions for a verdict.

Transcript, p. 90.

41. Counsel for plaintiff in error (the defendant) then directed the attention of the trial Judge to the laws of New York and the decisions of the New York courts given in evidence, and by a series of requests for directions to the jury, demanded "full faith and credit" for the laws of New York, and the enforcement of the contract between the parties in accordance with those laws and decisions.

Transcript, pp. 90-91.

42. Thereupon the trial Judge, absolutely ignoring the laws of New York and the provisions of the articles of incorporation and by-laws of the plantiff

in error, as well as the plain terms of the mortgage itself, held that the mortgage was paid and discharged, and that "as a matter of law the penalty attaches in favor of the plaintiffs as against defendant," and a verdict for plaintiffs (defendants in error) for $1,800 and costs was accordingly directed.

Transcript, pp. 93, 94.

43. To these rulings of the trial Court and the verdict found by direction of the Court, exceptions were duly taken in accordance with the practice in South Carolina and the case taken in regular course to the Supreme Court of South Carolina for review.

Transcript, pp. 93, 94, 95, 97.

44. The "exceptions" to the action of the trial Court were largely based upon the refusal of that Court to apply the laws of New York and several times definitely invoked those laws and demanded their application to the contract between the parties.

Transcript, pp. 93, 94; Exceptions, pars. 2, 3, 4, 9, 11.

45. After the case had reached the Supreme Court of South Carolina, and in accordance with what seems to be the practice in that State, counsel for defendants in error, as respondents in that Court, served and filed a notice of certain grounds upon which they intended to invoke an affirmance of the judgment below. One of those grounds was: "*Because these contracts should be construed and governed by the laws of South Carolina.*"

Transcript, p. 96; par. VIII.

46. On this state of the record, the case came on for hearing in the Supreme Court of South Carolina and the judgment of the Court below was affirmed upon the very ground stated in the preceding paragraph, and no other, the Supreme Court of South Carolina holding in an opinion, *which is a part of the record in this case*, that:

"*The agreement herein is, in our opinion, injurious to the interests of our people, and whatever may be the laws of New York, we do not think they should be enforced in this State.*"

Transcript, pp. 97, 100, 101.

47. In the opinion of the Supreme Court of South Carolina the Court recognizes the contention of plaintiff in error that the contracts and by-laws "are to be construed under the laws of New York" (Transcript, p. 100, side page 187), but denies the right of plaintiff in error to have them so construed, on the ground that: "This is not a right of either State. * * * There is no comity among the courts of the several States. * * * It is the duty of every State to look to the interests of its own subjects. * * * No State is bound to recognize or enforce contracts which are injurious to the welfare of its people or which are in violation of its own laws. * * * It thus appears that *this* State is not compelled *from mere comity* (?) to recognize the laws of New York for the reasons stated;" and so "full faith and credit" was directly denied to the laws of New York, and the judgment of the Court below was, *upon this express ground*, affirmed.

Transcript, pp. 100-101.

THE FEDERAL QUESTIONS INVOLVED.

48. Upon this state of the record, without more, we submit that three and perhaps four *federal questions* clearly appear, namely:

(*a.*) Full faith and credit was claimed for the laws of New York and such faith and credit expressly denied.

(*b.*) The "equal protection" of the laws was denied to plaintiff in error in contravention of the XIVth. Amendment to the Constitution of the United States.

(*c.*) Plaintiff in error was deprived of its property without "due process of law," and,

(*d.*) The Supreme Court of South Carolina by its decision overturned *the settled construction* of §§ 1894 and 1895 of the Revised Statutes of South Carolina of 1893 (Acts of 1817), and thereby impaired the obligations of a contract in violation of the Constitution of the United States.

49. Nor can it be claimed for a moment that the Supreme Court of South Carolina did not fully understand such to be the meaning and effect of its own decision as its action upon the "petition for a rehearing" shows.

The opinion of the Court was handed down November 28, 1899 (Transcript, p. 97, side p. 183).

Shortly thereafter a petition for a rehearing was filed which appears in the record and is certified to be a part thereof.

Transcript, pp. 101-108; also p. 108, side page 204, Clerk's certificate.

This petition for a rehearing distinctly raised all the Federal questions above stated and presented to the attention of the Supreme Court of South Carolina the fact that by its decision it had expressly denied the rule of constitutional obligation requiring full faith and credit to be given by it to the laws and judicial decisions of the State of New York.

Petition for Rehearing, Transcript, pp. 102, 103, par. IV.; p. 104, par. V.; p. 104, pars. VI., VII.; p. 105, pars. VIII., IX., X; p. 106, par. XIII.; p. 107, par. XV.

The Supreme Court of South Carolina denied its jurisdiction to entertain the petition for a rehearing, but, in disposing of the matter, significantly said:

"*We may add, however, that even if we had jurisdiction to consider and determine these questions we do not think there would be any ground for a rehearing.*"

Transcript, p. 108.

50. We are familiar with the doctrine laid down by this Court that a Federal question cannot be raised for the *first* time in the State court by a petition for a rehearing, but we do not think that rule has any application here, because the Federal questions were *previously* raised "by necessary implication" on the face of the record, as we have clearly shown (*ante*, pp. 22-24).

What we do insist upon is that the petition for a rehearing forcibly urged upon the Supreme Court of South Carolina its duty to reconsider its denial of several constitutional rights to the plaintiff in error, and that thereupon that Court deliberately reaffirmed the correctness of its opinion, leaving no doubt that its intention was to deny "full faith and credit to the laws of New York" upon the mistaken theory that no constitutional obligation, but only one of mere interstate comity, which it was at liberty to ignore, required it to apply the laws of New York to the construction of a New York contract made by a New York corporation.

51. On the record thus shown a writ of error was granted by MR. CHIEF JUSTICE FULLER, to remove this case to this Court, and it is now here for review and final determination on its merits.

Transcript, pp. 115-116.

Wherefore, the plaintiff in error by its counsel assigns errors as follows:

Assignment of Errors.

"Comes now the Eastern Building and Loan Association of Syracuse, New York, plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and judgment of the Supreme Court of South Carolina in the above entitled cause and assigns error thereto as follows:

"1. The Supreme Court of South Carolina erred in refusing to give full faith and credit to the pub-

lic acts, records and judicial decisions of the State of New York plead and given in evidence by the plaintiff in error and in denying the rule of constitutional obligation established by Section 1 of Article IV. of the Constitution of the United States and Section 905 of the Revised Statutes of the United States.

"2. The Supreme Court of South Carolina erred in its construction of the contract obligations between plaintiff in error and defendants in error, in this: That by its refusal to consider and pass upon the contract obligations of defendants in error to plaintiff in error entered into in the State of New York under the laws of that State, it impaired the obligation of a contract between the parties, refused full faith and credit to the public acts, records and judicial proceedings of the State of New York, and deprived defendant of its property without due process of law.

"3. The Supreme Court of South Carolina erred in the application to the plaintiff in error (defendant below) of Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and erred in changing the settled construction of said statutory provisions, whereby it impaired the obligation of the contract between defendants in error and the plaintiff in error, denied the plaintiff in error the equal protection of the laws of South Carolina and deprived it of its property without due process of law.

"4. The Supreme Court of South Carolina erred in holding that the laws of New York were not binding upon the courts of South Carolina and did not enter into, govern and control the construction of the mortgage executed by defendants in error to plaintiff in error, so far as the obligations of defendants in error as members of and stockholders in plaintiff in error are concerned, and by such holding and decision the Court erred in refusing full faith

and credit to the public acts, records and judicial proceedings of the State of New York, and impaired the obligation of the contract between defendants in error and plaintiff in error.

"5. The Supreme Court of South Carolina erred in holding that the mortgage executed by defendants in error to plaintiff in error was discharged and paid, and that the plaintiff in error was subject to the penalty provided by Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, because such holding and decision rest solely upon the refusal of said Court to give full faith and credit to the public acts, records and judicial proceedings of the State of New York, and had the effect of changing the settled construction of said statutory provisions so as to impair the obligation of the contract between the defendants in error and the plaintiff in error, and apply such statutory provisions to a mortgage not discharged or paid, and to a case not contemplated by the words of the statute and not within the scope and meaning of the prior decisions of the Supreme Court of South Carolina, interpreting and applying said statutory provisions.

"6. The Supreme Court of South Carolina erred in changing the settled construction of Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, and in applying them to a case where the payment and discharge of a mortgage was controverted and denied by the mortgagee, and in which the mortgage itself was only an element or incident to the contract obligations existing between the defendants in error and the plaintiff in error, such contract obligations arising under and being controlled by the public acts, laws and judicial decisions of the State of New York.

"7. The Supreme Court of South Carolina erred in refusing to give full faith and credit to the public acts, records and judicial proceedings of the State of New York and to the contract entered into between

plaintiff in error and defendant in error in the State of New York, and under and pursuant to the laws thereof, and by its decision, opinion and judgment in said case the Supreme Court of South Carolina, in contravention of the Constitution of the United States, impairs the obligation of the contract between plaintiff in error and defendants in error, and said decision, opinion and judgment of the Supreme Court of South Carolina are erroneous in this, that they establish a rule of law impairing the obligation of contracts and depriving plaintiff in error of its property without due process of law.

"8. The Supreme Court of South Carolina erred in holding and deciding that 'whatever may be the laws of New York, we do not think they should be enforced in this State.'

9. The Supreme Court of South Carolina erred in affirming the judgment of the Court of Common Pleas for the County of Darlington, because the effect of such affirmance was to deprive plaintiff in error of its property without due process of law, deny to it the equal protection of the laws, deny full faith and credit to the laws and judicial proceedings of the State of New York, and abrogate the contract obligations of defendants in error to plaintiff in error in violation of the Constitution of the United States, and, particularly of the XIVth Amendment thereto.

"Wherefore the said Eastern Building and Loan Association, plaintiff in error, prays this Honorable Court to examine and correct the errors assigned, and for a reversal of the judgment of the Supreme Court of South Carolina entered in the said case of Lawrence S. Welling and Marion Bonnoitt, plaintiffs, respondents, against Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant, as aforesaid."

Transcript, pp. 113–115.

BRIEF.

I.

THE SUPREME COURT OF SOUTH CAROLINA DENIED "FULL FAITH AND CREDIT" TO THE LAWS OF NEW YORK BY REFUSING TO CONSTRUE THE CONTRACT OBLIGATIONS OF DEFENDANTS IN ERROR WITH PLAINTIFF IN ERROR, IN ACCORDANCE WITH THE CORPORATE CHARTER AND BY-LAWS OF THE EASTERN BUILDING AND LOAN ASSOCIATION AND THE STATUTES AND JUDICIAL DECISIONS OF NEW YORK.

By the provisions of Article IV., § 1 of the Constitution of the United States "a rule of comity becomes a rule of constitutional obligation."

Cooley's Const. Law (3d Ed.), 203.

And proof being made of the statutes of a sister State governing a contract made and performable in such State, the same construction and effect must be given to such statutes in the construction of the contract as would be given them by the courts of the sister State.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622.
Mills *v.* Duryee, 7 Cr., 481, 484.
Hanley *v.* Donoghue, 116 U. S., 1, 3.

"It does not seem to have occurred to the Chief Justice (Mr. Chief Justice Taney) that the writ could be maintained upon the ground of a denial of full faith and credit to the Mississippi statute by the construction given by the Louisiana Court."

Glenn *v.* Garth, 147 U. S., 360, 369, per Fuller, Chief Justice.

The laws of New York of 1851 and 1875, and the Corporate Charter and by laws, as well as the decisions of the Courts of New York, construing the same, having been proved as facts in the case at bar the constitutional duty of the Supreme Court of South Carolina, was to construe the obligations of defendants in error, as members of the New York corporation, in accordance with the laws and decisions of New York.

Lloyd *v.* Matthews, 155 U. S., 222.
Allgeyer *v.* Louisiana, 165 U. S., 578, 589.

It may be contended that in this case the Supreme Court of South Carolina "construed" the New York statutes but did not "deny their validity."

Lloyd *v.* Matthews, 155 U. S., 222.
Glenn *v.* Garth, 147 U. S., 360.
Banholzer *v.* New York Life Ins. Co., 178 U. S., 406.

It will be noted that in the cases of *Glenn* v. *Garth*, and *Lloyd* v. *Matthews*, the State statutes were not proved as facts while in the *Banholzer* case "*the parties mutually agreed* that this should be a New York contract and construed according to the laws of that State" (178 U. S., 406, 407). Hence in none of these cases did the question arise as to the duty of a State court to construe the statutes of another State *proven as facts*, in accordance with the unequivocal language of the statutes themselves and the plain meaning of the decisions of the Courts of the sister State construing such statutes.

The case at bar presents this question and calls for its decision by this Court, the Supreme Court of South Carolina in fact denying validity to the laws and decisions of New York by saying: "Whatever may be the laws of New York we do not think they should be enforced in this State."

Ante, pp. 23 and 24; Transcript, pp. 37, 100, 101.

The contract relations between plaintiff in error and defendants in error arising out of the *status* of defendants in error as stockholders in plaintiff in error, the corporate charter, by-laws and the statutes of New York enter into and form a part of the contract between plaintiff in error and defendants in error, and the contract being a New York contract, performable in that State, any construction thereof which subjects it to the provisions of §§ 1894 and 1895 of the Revised Statutes of South Carolina of 1893, necessarily refuses "full faith and credit" to the laws of New York, *unless it gives to the corporate charter and by-laws, and the statutes of New York the same construction, meaning and effect given to them by the courts of New York.*

Canada So. R. Co. *v.* Gebhard, 109 U. S., 527, 537.

Relfe *v.* Rundle, 103 U. S., 222, 225, 226.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622.

Englehardt *v.* Fifth Ward Loan Assn., 148 N. Y., 281, 285.

Ware *v.* Bankers' Loan & Ins. Co., 95 Va., 680; s. c., 64 Am. St. Rep., 826.

Sulz *v.* Mutual Reserve Fund Life Assn., 145 N. Y., 563, 568, Opinion per Peckham, *J.*

Clark *v.* Mut. Reserve Fund Life Assn. (D. C.), 43 L. R. A., 390, 395.

Campbell *v.* Eastern B. & L. Assn. (Va.), 37 So. E. Rep., 350.

Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.

Eastern B. & L. Assn. *v.* Bedford, 88 Fed. Rep. 7 (now pending in this Court).

Washington Cent. Bk. *v.* Humes, 128 U. S., 195, 197, 206.

Coghlan *v.* So. Car. R. Co., 142 U. S., 101, 109.

II.

THE SUPREME COURT OF SOUTH CAROLINA, BY ITS DECISION, DENIED TO PLAINTIFF IN ERROR THE "EQUAL PROTECTION OF THE LAWS" IN CONTRAVENTION OF THE XIVTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, BECAUSE BY SUCH DECISION IT REFUSED TO ENFORCE A CONTRACT MADE IN THE STATE OF NEW YORK, PERFORMABLE IN NEW YORK AND VALID UNDER THE LAWS OF NEW YORK, RESTING SUCH REFUSAL UPON THE EXPRESS GROUND THAT THE COURTS OF SOUTH CAROLINA ARE NOT REQUIRED TO GIVE EFFECT TO THE STATUTES OF ANOTHER STATE FORMING A PART OF SUCH CONTRACT, IF THEY DEEM SUCH STATUTES INJURIOUS TO CITIZENS OF SOUTH CAROLINA, PARTIES TO THE CONTRACT.

Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.
Gibson *v.* Mississippi, 162 U. S., 565, 582, 583.
Ex parte Virginia, 100 U. S., 339, 346, 347.

The essential features of the contract obligations of defendants in error with plaintiff in error are embodied in the articles of incorporation and by-laws of the plaintiff in error, and the notes and mortgage executed by the defendants in error were a mere incident to the performance by defendants in error of their obligations as "advanced" stockholders.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
O'Malley *v.* People's Assn., 92 Hun (N. Y.), 572.
Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N. Y.), 376, 378.
Ware *v.* Banker's Loan & In. Co., 95 Va., 680; s. c., 64 Am. St. Rep., 826.
Bennett *v.* Eastern B. & L. Assn., 177 Pa. St., 233; s. c., 55 Am. St. Rep., 723.
Campbell *v.* Eastern B. & L. Assn. (Va.), 87 S. E. Rep., 350.
Eastern B. & L. Assn. *v.* Snyder, 37 S. E. Rep., 298.
London Assurance *v.* Companhia De Moagens, 167 U. S., 149, 161.
Burckle *v.* Eckhart, 3 N. Y., 132, 135.

III.

THE SUPREME COURT OF SOUTH CAROLINA, BY ITS DECISION, NULLIFIED THE CONTRACT OBLIGATIONS OF THE PARTIES, RELEASED DEFENDANTS IN ERROR FROM THEIR INDEBTEDNESS TO PLAINTIFF IN ERROR, CONFISCATED THE BALANCE OF INDEBTEDNESS SECURED BY THE MORTGAGE IN QUESTION, RELEASED THE LIEN OF SAID MORTGAGE AND REQUIRED PLAINTIFF IN ERROR TO PAY TO DEFENDANTS IN ERROR, BY WAY OF PENALTY, THE SUM OF $1,800, THEREBY DEPRIVING PLAINTIFF IN ERROR OF ITS PROPERTY WITHOUT "DUE PROCESS OF LAW" IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES AND THE XIVTH AMENDMENT THERETO.

"It has never been denied, nor is it now, that the Supreme Court of the United States has an appellate power to revise the judgment of the Supreme Court of a State, whenever such a court shall ad-

judge that not to be a contract which has been alleged, in the forms of legal proceedings, by a litigant, to be one, within the meaning of that clause of the Constitution of the United States which inhibits the States from passing any law impairing the obligation of contracts. Of what use would the appellate power be to the litigant who feels himself aggrieved by some particular State legislation, if this Court could not decide, independently of all adjudication by the Supreme Court of a State, whether or not the phraseology of the instrument in controversy was expressive of a contract and within the protection of the Constitution of the United States, and that its obligation should be enforced, notwithstanding a contrary conclusion by the Supreme Court of a State? It never was intended, and cannot be sustained by any course of reasoning, that this Court should, or could, with fidelity to the Constitution of the United States, follow the construction of the Supreme Court of a State in such a matter, when it entertained a different opinion."

Jefferson Branch Bank *v.* Skelly, 1 Black, 436, 443.

McCullough *v.* Virginia, 172 U. S., 102, 109.

This Court when called upon to interpret a contract made under the laws of a State looks first to the decisions of the courts of such State in determining the meaning and construction of the laws under which the contract was made.

Sioux City R. Co. *v.* North American Trust Co., 173 U. S., 99, 100.

In like manner the courts of every State are required by the Constitution to give full faith and credit to such laws and decisions, if properly given in evidence, when construing a contract entered into and to be performed in a sister State.

Chicago &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615.

And the right of the parties to contract under and subject to the laws of New York neither the legislature nor the courts of South Carolina can abridge or deny.

R. S. U. S., § 1977.
Yick Wo *v.* Hopkins, 118 U. S., 356, 369.
Santa Clara Co. *v.* Southern Pacific R. Co., 118 U. S., 394, 396.

The contract of membership of defendants in error with plaintiff in error, being a contract made and to be performed in the State of New York, must not only be construed in accordance with the laws of New York, but the Courts of South Carolina are forbidden by the XIVth amendment to the Constitution of the United States to deny to plaintiff in error the "equal protection of the laws" by refusing to enforce it in that State in accordance with the laws of New York.

Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.

And any failure to so enforce the contract is a denial of "full faith and credit" to the laws of New York.

Huntington *v.* Attrill, 146 U. S., 657, 666.

It should not be overlooked that this litigation, instead of being instituted in the jurisdiction of the corporate situs, as it should have been [Clark *v.* Mutual Reserve Fund Life Assn. (D. C.), 43 L. R. A., 390, 397; Taylor *v.* Mutual Reserve Fund Life Assn. (Va.), 45 L. R. A., 149; Leary *v.* Columbia River, &c., Co., 82 Fed. Rep., 775; Sidway *v.* Missouri Land, &c., Co., 101 Fed. Rep., 481; Republican Mountain Silver Mines *v.* Brown, 58 Fed. Rep., 644], was begun in South Carolina by defendants in error *seeking affirmative relief*, and prosecuted to judgment there upon the principle that the courts of South Carolina were not bound to enforce contracts

made and performable in New York, in accordance with New York laws, but could enforce the New York law so far as it was advantageous to defendants in error, and deny the application of plain, unequivocal, statutory provisions of New York when adverse to their interests. This may be "due process of law," but if so it is neither justice nor honesty, nor does it accord to plaintiff in error the "equal protection" of the laws which the XIVth amendment guarantees.

The contention of defendants in error is in effect that this contract with the plaintiff in error is not embodied in the stock certificate, articles of incorporation and by-laws, taken together, but is limited to the provisions of the stock certificate and mortgage and that there is in fact no such contract as that claimed by plaintiff in error; and the courts of South Carolina, by ignoring the provisions of the New York statutes and of the articles of association and by-laws and the decisions of the New York courts, virtually sustain this contention.

"We have often had occasion to say that this Court, when reviewing the final judgment of a State Court upholding a State enactment alleged to be in violation of the contract clause of the Constitution, possesses paramount authority to determine for itself the existence or the non-existence of the contract set up, and whether its obligation has been impaired by the State enactment."

Chicago, &c., R. *v.* Nebraska, 170 U. S., 57, 68.

Von Hoffman *v.* Quincy, 4 Wall., 535, 550.

If this Court thus protects a contract against State legislation under the contract clause of the Federal Constitution, will it not protect a contract against the decision of a State court which refuses full faith and credit to the laws of a sister State and abrogates a contract upon the pretense of construing

it? Repudiation and confiscation are not "construction" and "interpretation."

See Western Mass., &c., Ins. Co. *v.* Hilton, 42 App. Div. (N. Y.), 52, 58, 59.
Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 108 U. S., 18, 22.
Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S. 615.

The decision of the Supreme Court of South Carolina in the case at bar denies to plaintiff in error all remedies upon its contract with defendants in error as stockholders and refuses to hold them to their obligations as such. No State can so deny the enforcement within its jurisdiction of valid contracts under the laws of a sister State.

Edwards *v.* Kearzey, 96 U. S., 595, 600, 601.
The Homestead Cases, 22 Gratt. (Va.), 266; s. c., 12 Am. Rep., 507, 514, 515.
White *v.* Hart, 13 Wall., 646, 654.
Cæsar *v.* Capell, 83 Fed. Rep., 403.
Eastern Building and Loan Association *v.* Bedford, 88 Fed. Rep., 7.
Allgeyer *v.* Louisiana, 165 U. S., 578.

It also seems to us that the decision of the Supreme Court of South Carolina deprives plaintiff in error of its liberty to contract and of its property without "due process of law."

The effect of the decision is to require plaintiff in error, in violation of the statutes of New York and the provisions of its charter and by-laws, to pay defendants in error a sum of money for each share of stock held by them, largely in excess of payments made by them upon the stock, plus their *pro rata* share of the profits of the corporation (*ante*, p. 28). This certainly deprives the corporation of its property

and interferes with its liberty of contract. But does it do so without "due process of law"?

"This Court has never attempted to define with precision the words 'due process of law.'"

Holden *v.* Hardy, 169 U. S., 366, 389.

But the constitutional restriction undoubtedly applies to the *judicial* as well as to the executive and legislative powers of a State.

Murray's Lessees *v.* Hoboken Land Co., 18 How., 272, 276.

Hence, we submit that a state court cannot by *judicial legislation* abrogate a contract valid in another State, entered into under the laws of that State and performable in such other State, without violating that clause of the XIVth amendment to the Constitution of the United States, which provides that no State "shall * * * deprive any person of life, liberty or property without due process of law."

Holden *v.* Hardy, 169 U. S., 366, 390, 391.

Allgeyer *v.* Louisiana, 165 U. S., 578.

"For 'upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them;' and 'if they fail therein, and withhold or deny rights, privileges or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this Court for final and conclusive determination.'"

In re Wood, 140 U. S., 278, 286.
Robb *v.* Connolly, 111 U. S., 624, 637.
Neal *v.* Delaware, 103 U. S., 370, 386, 387.

We are aware that it has been held by this Court that only State statutes, not judicial decisions, impair the obligation of a contract within the meaning of § 10, Art. I. of the Constitution of the United States.

New Orleans Water Works Co. *v.* Louisiana Sugar Co., 125 U. S., 18, 30.

Knox *v.* Exchange Bank, 12 Wall., 379, 383.

But notwithstanding these decisions we direct attention to the opinions of the Supreme Court of South Carolina in the case at bar and in the Ebaugh case (Transcript, p. 97; 36 S. E. Rep., 535), as virtually "Laws" of South Carolina made subsequent to the contract between the parties and beyond question impairing the obligation of the contract.

Why such a "law" is not within the meaning of the constitutional provision in a case like this seems by no means clear. At any rate, the decision in the case at bar did deny the equal protection of the laws to plaintiff in error, and did refuse full faith and credit to the laws of New York.

It would certainly be anomalous to hold that a contract made and to be performed in New York and valid under the laws of New York could be impaired as to its obligation by the Supreme Court of South Carolina, at the suit of a party resident in that State, in violation of the plain terms of the contract and of the laws of New York, without the denial of full faith and credit to the laws of New York. Yet such is the effect of the contention of counsel for defendant in error in this case.

IV.

THE SUPREME COURT OF SOUTH CAROLINA, BY ITS DECISION, CHANGED THE SETTLED CONSTRUCTION OF SECTIONS 1894 AND 1895 OF THE REVISED STATUTES OF SOUTH CAROLINA OF 1893, AND THEREBY IMPAIRED THE OBLIGATION OF THE CONTRACT BETWEEN PLAINTIFF IN ERROR AND DEFENDANTS IN ERROR IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES.

Prior to the opinion, decision and judgment of the Supreme Court of South Carolina in this case the settled, uniform and unvarying construction of sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893 by the Supreme Court of South Carolina had been and was that the same were only applicable in and to cases where a mortgage of real estate had been actually paid and satisfied, or there had been a full, true, complete and legal tender of the debt, damages, costs and charges secured by such mortgage, and that said settled construction of said statutory provisions is evidenced by prior decisions and judgments of the Supreme Court of South Carolina, to some of which special reference is made. In the case of *Lynch* v. *Hancock*, 14 S. C., 66, 89 (decided in 1880), after quoting the sections of the statute in question, *McIver, J.*, delivering the opinion of the Court, says:

"It will be observed that this provision applies only where full payment or satisfaction *of the debt* secured by the mortgage has been made, or where there has been a legal tender *of such debt*, and to extend it to anything else would be an unwarrantable addition to the terms of the statute."

See also--

Kaphan *v.* Ryan (1882), 16 S. C., 352.

In the case at bar "*the debt*" secured by the mortgage consisted of the obligations assumed by defendants in error as stockholders in plaintiff in error under the laws of New York.

Ante pp. 9-12, 16-19.

"We shall never immolate truth, justice and the law because a State tribunal has erected the altar and decreed the sacrifice."

Gelpcke *v.* Dubuque, 1 Wall., 206.
Township of Pine Grove *v.* Talcott, 19 Wall., 677.

And where a contract was valid under the laws and statutes of a State as construed when the contract was entered into, no subsequent change of law or decision will be permitted to invalidate it.

Olcott *v.* Supervisors, 16 Wall., 690.
Douglass *v.* County of Pike, 101 U. S., 677.
Burgess *v.* Seligman, 107 U. S., 20, 33.
Pleasant Township *v.* Ætna Life Ins. Co., 138 U. S., 67, 73.

V.

UNDER THE LAWS OF NEW YORK, THE PAYMENT OF THE SEVENTY-EIGHT NOTES NAMED IN THE MORTGAGE DID NOT HAVE THE EFFECT OF RELEASING THE LIEN OF AND DISCHARGING THE MORTGAGE EXECUTED BY THE DEFENDANTS IN ERROR, SUCH MORTGAGE BEING EXPRESSLY GIVEN TO SECURE THE PERFORMANCE "OF ALL PROMISES AND ENGAGEMENTS MADE AND ENTERED INTO WITH SAID ASSOCIATION, ACCORDING TO THE TRUE INTENT AND MEANING OF ITS BY-LAWS AND ARTICLES OF ASSOCIATION," AND THEREFORE SUCH

MORTGAGE WAS NOT SUBJECT TO THE PROVISIONS OF SECTIONS 1894 AND 1895 OF THE REVISED STATUTES OF SOUTH CAROLINA OF 1893 AT THE TIME OF THE INSTITUTION OF THIS ACTION UNDER THOSE SECTIONS BY THE DEFENDANTS IN ERROR.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
O'Malley *v.* People's Assn., 92 Hun (N. Y.), 572.
Campbell *v.* Eastern B. & L. Assn. (Va.), 37 S. E. Rep., 350.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.
Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N.Y.), 376.
Province *v.* Inter-State B. & L. Assn. (Tenn.), 58 S. W. Rep., 265.
People's B. & L. Assn. *v.* Morris (Ark.), 56 S. W. Rep., 266.
Royal Trust Co. *v.* Culver, 87 Ill. App., 630.
Cantwell *v.* Stockmen's B. & L. Assn, 88 Ill. App., 247.
Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

VI.

UNDER THE LAWS OF NEW YORK, PLAINTIFF IN ERROR IS A PURELY MUTUAL CORPORATION, WHOSE STOCKHOLDERS HAVE EQUAL, MUTUAL AND RECIPROCAL RIGHTS, DUTIES AND OBLIGATIONS, AND NO ONE

OF WHOM CAN LEGALLY BE ACCORDED, IN THE STATE OF NEW YORK, ANY ADVANTAGE, PREFERENCE OR PRIORITY OVER ANOTHER.

Ch. 122, Laws of N. Y., 1851, and Ch. 564, Laws of 1875, Transcript, pp., 67–74.

Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

People *v.* Lowe, 117 N. Y., 175, 180.

Tindall, *C. J.*, in Silver *v.* Barnes, 6 Bing., N. C., 180; 8 Scott, 300; 37 Eng. Com. L., 335.

Robertson *v.* Homestead Assn., 10 Md., 397; s. c., 69 Am. Dec., 145.

Tilley *v.* Am. B. & L. Assn., 52 Fed. Rep., 618, 622.

Thompson on Building Associations (2d Ed.), §§ 3, 4.

"A mutual savings fund and loan association is purely a co-operative society, consisting of a partnership in the profits of money as a money maker, equitably distributed in proportion to the severalties of capital furnished by the individual members thereof."

Wrigley on Building Associations, p. 16.

It surely must follow that the courts of South Carolina cannot by refusing to give "full faith and credit" to the laws of New York accord a preference to members of plaintiff in error resident in South Carolina.

VII.

THE ARTICLES OF INCORPORATION AND BY-LAWS OF PLAINTIFF IN ERROR, AND THE PROVISIONS OF CHAPTER 122 OF THE NEW YORK LAWS OF 1851, AND CHAPTER 564 OF THE NEW YORK LAWS OF 1875, ARE THE TEST OF THE RIGHTS AND OBLIGATIONS OF THE STOCKHOLDERS OF THE ASSOCIATION, AND BY THEM THE CONTRACT OF MEMBERSHIP MUST BE CONSTRUED, NOT ONLY IN NEW YORK BUT IN EVERY STATE OF THE UNION WHERE THE COURTS MAY BE CALLED UPON TO INTERPRET THE CONTRACT OF MEMBERSHIP.

Const. U. S., Art. IV., § 1.
Relfe *v.* Rundle, 103 U. S., 222, 225, 226.
Canada So. Ry. *v.* Gebhard, 109 U. S., 527, 537.
Chase *v.* Curtis, 113 U. S., 452, 458.
Young *v.* Wempe, 46 Fed. Rep., 354.
3 Thomp. on Corp., § 3046.

And so it has been held by the courts of several States with reference to membership contracts between plaintiff in error and its stockholders.

Bennett *v.* Eastern B. & L. Assn., 177 Pa. St., 233; s. c., 55 Am. St. Rep., 723.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.
Campbell *v.* Eastern B. & L. Assn. (Va.), 37 S. E. Rep., 350.
Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

In the case of Bedford *v.* Eastern Building and Loan Association, now awaiting decision in this Court, we have so recently fully reviewed in our

brief and upon oral argument the terms and provisions of the laws of New York and the provisions of the articles of association and by-laws of plaintiff in error that we do not deem it necessary to restate them at length in this connection. The contracts in this case and in the Bedford case are substantially identical and both, we think, must be regarded as New York contracts performable in that State and governed by the laws of New York.

Eastern B. & L. Assn. *v.* Bedford, 88 Fed. Rep., 7.

VIII.

UNDER THE LAWS OF NEW YORK, AND THE ARTICLES OF ASSOCIATION AND BY-LAWS OF PLAINTIFF IN ERROR, DEFENDANTS IN ERROR COULD NOT, IN THE STATE OF NEW YORK, MAINTAIN AN ACTION OR RECOVER UPON THEIR STOCK CERTIFICATE THE PAR OR MATURITY VALUE THEREOF IN ADVANCE OF THE ACTUAL MATURITY OF THE STOCK, NOR COULD THEY, EITHER AT LAW OR IN EQUITY, TREAT THEIR MORTGAGE AS DISCHARGED AND SECURE THE CANCELLATION THEREOF. HENCE THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA IN THIS CASE DENIED "FULL FAITH AND CREDIT" TO THE LAWS OF NEW YORK, DEPRIVED PLAINTIFF IN ERROR OF ITS PROPERTY WITHOUT "DUE PROCESS OF LAW," AND DENIED TO IT THE "EQUAL PROTECTION" OF THE LAWS.

Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N. Y.), 578.

O'Malley *v.* People's Assn., 92 Hun (N. Y.), 572.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
People *v.* Lowe, 117 N. Y., 175.
Eastern B. & L. Assn. *v.* Snyder, *supra.*
Campbell *v.* Eastern B. & L. Assn., *supra.*

Manifestly the stock of plaintiff in error can only mature either by continued payment of the monthly dues of seventy-five cents per share until the stock has been fully paid to its par value or by such payments, plus an apportionment of profits from earnings.

Ante pp. 6, 7, 13.
Laws of N. Y., 1851, Ch. 122, §§ 1, 7.
Transcript, 67, 68.

At the same time no apportionment of profits to the stock can be made except from actual earnings without violating the express provisions of the law under which plaintiff in error is incorporated.

Laws of N. Y., 1875, Ch. 564, § 1; amending Laws of N. Y., 1851, Ch. 122, § 7.
Transcript, pp. 71 and 72.

Therefore, until the stock actually attains its par or maturity value, it cannot be set off against and cancel an "advance" to its holder of its par value, but only represents the actual amount paid in upon it, plus any apportioned profits.

Ante pp. 18 and 19.
Campbell *v.* Eastern B. & L. Assn., *supra.*

And under the unequivocal terms of the New York Act of 1851, as amended in 1875, a "redeemed" or "advanced" shareholder must continue to make payments upon his stock, even though the estimated maturity period has been exceeded.

"No holder of redeemed shares shall claim to be exempt from making *the monthly or other stated payments* provided in the articles of association, upon the ground that by reason of losses or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon."

Laws of N. Y., 1875, Ch. 564, § 1,
Transcript, pp. 71 and 72.
Laws of N. Y., 1851, Ch. 122, § 7,

The same sections provide that the making of monthly payments and of "premiums," in addition to interest, shall not be deemed usury.

Laws of N. Y., 1851, Ch. 122, § 7.
Laws of N. Y. 1875, Ch. 564, § 1;
Transcript, pp. 68, 72.

Hence when the "advanced" or "redeemed" stock of defendants in error had not matured at the expiration of seventy-eight months from the date of its issue it became obligatory on the plaintiff in error and its officers to continue to collect monthly payments of dues, premiums and interest from the defendants in error until such time as the stock should actually mature, and the duty of defendants in error, as members, was to make such payments without question. Instead of doing so they first refused to continue their payments, and then instituted this action to secure the cancellation of their mortgage and recover a heavy penalty from plaintiff in error in addition.

Ante, pp. 16–19.

Having borrowed originally $5,000, the par value of their stock, advanced to them upon the pledge of the stock as collateral, they gave a mortgage to secure the payment of their stock in full with the understanding that when the stock attained

its par value it would be set off against the principal of their indebtedness, and both stock and loan would then be canceled. In the meantime they were to pay interest and premium, and in the profits derived therefrom they were themselves to share. But it was mistakenly estimated that the stock would mature in 78 months, and, therefore, notes to cover 75 full payments and three additional payments of premium and interest were given. Before the end of the 78 months the mistake was manifest. At the expiration of that period defendants in error had paid in upon their stock but $2,925 and profits of $199.50 had been credited thereto, so that the stock represented an actual value of but $3,121.50 (*ante*, pp. 18 and 19)

Nevertheless, on the ground that the contract was injurious to citizens of South Carolina, and that there was no constitutional obligation resting upon the courts of that State to observe the plain provisions of the laws of New York above cited, the Supreme Court of South Carolina paid the $5,000 debt of defendants in error with $3,125.50, and mulcted plaintiff in error in the additional sum of $1,800 as a penalty for not having voluntarily assented to the confiscation of its property by the defendants in error.

Contrast with this the views, upon the same state of facts, of that distinguished tribunal, the Supreme Court of Appeals of Virginia.

> Campbell *v.* Eastern B. & L. Assn., 37 S. E. Rep., 350.
>
> Eastern B. & L. Assn. *v.* Snyder, 37 S. E. Rep., 299.

Defendants in error paid upon their stock seventy-eight monthly payments of seventy-five cents per share. This amounted to but $58.50 per share, or upon fifty shares to an aggregate of $2,925. The credited profits to the fifty shares were but $199.50, or practically four dollars per share, making the paid in value of each share at the expiration of 78

months approximately $62.50, instead of the par or maturity value of $100. Therefore, under the articles of association of plaintiff in error and the laws of New York the obligation of defendants in error to continue their payments until the actual maturity of their stock remained, and this obligation was enforced not only by a covenant in their mortgage (*ante*, p. 10), but by an express provision of the corporate by-laws.

"All shareholders shall pay, or cause to be paid, a monthly installment of seventy-five cents on each share named in their certificate *until the same is fully paid.*"

By-Laws, Art. XIV., §§ 13 and 14, Transcript, p. 34.

Need we recur again to authorities already cited to show that "full faith and credit has not been given to the laws of New York; that plaintiff in error has been denied the "equal protection" of the laws and deprived of its property "without due process of law"?

The laws of New York were not "construed"; they were ignored! Their validity was expressly denied.

The only question was whether the *undisputed* law of New York as expressed in *unequivocal statutory provisions* should be held to govern the case, and the decision was that: "Whatever may be the laws of New York we do not think they should be enforced it this State."

Transcript, pp. 97, 101.

The Constitution is again "nullified" and the XIVth Amendment set at naught if this Court is without power and jurisdiction to revise the judgment of the Supreme Court of South Carolina in this case, and to enforce the laws of New York as constituent parts of the contract of the parties.

IX.

THAT A BUILDING AND LOAN ASSOCIATION CANNOT BY CONTRACT FIX THE MATURITY PERIOD OF ITS STOCK SO AS TO GUARANTEE AN ESTIMATED RATE OF PROFITS OR EARNINGS IS SETTLED LAW, NOT ONLY IN NEW YORK BUT IN EVERY JURISDICTION WHERE THE QUESTION HAS DIRECTLY ARISEN.

King *v.* International Assn., 170 Ill., 135, 142.
Royal Trust Co. *v.* Culver, 87 Ill. App. Rep., 630.
Bertche *v.* Equitable Loan Assn., 147 Mo., 343.
Schell *v.* Equitable, &c., Assn., 150 Mo., 103.
Province *v.* Interstate B. & L. Assn., (Tenn.), 58 S. W. Rep., 265.
Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N. Y.), 376, 378.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.
People's B. L. & S. Assn. *v.* Morris (Ark.), 56 S. W. Rep., 266.

Nor can the contention of the defendants in error that they were induced to become stockholders by representations that the stock would mature in seventy-eight months avail them as against this doctrine.

Upton *v.* Tibilcock, 91 U. S., 45, 50.
Demland *v.* Pioneer S. & L. Co., 20 Ohio Cir. Ct. Rep., 223.

X.

IN THE CASE AT BAR THE SUPREME COURT OF SOUTH CAROLINA HELD THAT ADVANCED OR BORROWING MEMBERS OF PLAINTIFF IN ERROR ARE ENTITLED TO HAVE THEIR MORTGAGES RELEASED AT THE EXPIRATION OF 78 MONTHS WITHOUT REGARD TO THE MATURITY OF THEIR STOCK, WHILE IN THE EBAUGH CASE, ALSO PENDING IN THIS COURT, UPON WRIT OF ERROR, THE SAME COURT HELD THAT NON-ADVANCED OR NON-BORROWING MEMBERS ARE ENTITLED TO RECOVER FROM PLAINTIFF IN ERROR THE PAR VALUE OF THEIR STOCK AT THE EXPIRATION OF 78 MONTHS, EVEN THOUGH THE STOCK HAS NOT, IN FACT, MATURED. THE ASSOCIATION IS A PURELY MUTUAL CORPORATION AND HAS ONLY THE TWO CLASSES OF SHAREHOLDERS ABOVE NAMED. HENCE BOTH DECISIONS CANNOT BE RIGHT, AND IN LAW NEITHER IS.

Welling and Bonnoitt Transcript, pp. 97 to 101, Opinion of the Court; 56 S. C., 280.
Ebaugh Transcript (Term No. 453), pp. 67 to 68, Opinion of the Court; 36 S. E. Rep., 535.
Ante, pp. 18 and 19.

In this case by its decision the Supreme Court of South Carolina confiscates the mortgages executed by borrowing members of plaintiff in error and relieves them of their obligations to repay the advance to them with premium and interest thereon. It thereby deprives plaintiff in error of its only source of profits from which its stock can be "matured," and at the same time gives defendants in error credit for $100 per share upon their stock on which they have only paid in $58.50 per share. Necessarily

this difference, to say nothing of the penalty exacted in addition, must be taken out of the capital stock of the corporation contributed by other shareholders.

On the other hand, by its decision in the Ebaugh case the same Court holds that a non-borrowing member who has paid in but $58 at the expiration of seventy-eight months from the date of his certificate is entitled to receive $100 per share from the plaintiff in error therefor.

From what source this difference is to come, the profits having been insufficient to mature the stock, the learned Supreme Court of South Carolina does not indicate!

Ebaugh *v.* Eastern B. & L. Assn., 36 S. E. Rep., 535; Ebaugh Transcript (Term, No. 453), pp. 67–68.

Brief of Plaintiff in Error (Ebaugh Case) in opposition to motion to dismiss, pp. 9–17, 27–28.

The two cases are the exact antithesis of each other. One robs the non-borrowing shareholders for the benefit of the borrowing members, the other robs both borrowing and non-borrowing members to pay off withdrawing stock that has not matured at the expiration of seventy-eight months, and both proceed upon the theory that a corporation can guarantee to all its stockholders of all classes a fixed rate of profits that will make the stock fully paid and withdrawable at its par value of $100 per share, although, in fact, less than 60 per cent. of the par value has been paid in upon the stock, and the profits do not amount to more than $4 per share at the end of the 78 months' period!

The Supreme Court of South Carolina clearly overlooks the nature of plaintiff in error as a purely mutual corporation.

Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

People *v.* Lowe, 117 N. Y., 175.

Concordia Assn. *v.* Read, 93 N. Y., 474.
People *ex rel* Fairchild *v.* Preston, 140 N. Y., 549.

And by disregarding the laws of New York and the mutual, equal and reciprocal rights and duties of the members of plaintiff in error, destroys the mutuality of the corporation, improperly exercises visitatorial powers over it, and relies upon one erroneous decision to support another equally erroneous, both being rendered in violation of the Constitution of the United States, as, we believe, has already been demonstrated.

XI.

WE SUBMIT THAT THE FEDERAL QUESTIONS PRESENTED IN THIS BRIEF WERE FULLY RAISED AND SAVED IN THE STATE COURT, AND THAT THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA WAS AGAINST THE CONSTITUTIONAL RIGHTS CLAIMED BY PLAINTIFF IN ERROR. THIS CASE WAS, THEREFORE, PROPERLY BROUGHT TO THIS COURT BY WRIT OF ERROR AND MUST NOW BE DETERMINED HERE UPON ITS MERITS AND IN ACCORDANCE WITH A CORRECT CONSTRUCTION OF THE CONTRACT OBLIGATIONS OF THE PARTIES AS FIXED BY THE CHARTER AND BY-LAWS OF THE PLAINTIFF IN ERROR AND THE STATUTES AND JUDICIAL DECISIONS OF THE STATE OF NEW YORK.

" But the true and rational rule is, that the Court must be able to see clearly, from the whole record, that a certain provision of the Constitution or Act of Congress was relied on by the party who brings

the writ of error, and that the right thus claimed by him was denied."

Bridge Proprietors *v.* Hoboken Co., 1 Wall., 116, 143.

"We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a Federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of § 709 of the Revised Statutes, as if it had been specifically referred to and the right directly refused."

Chapman *v.* Goodnow, 123 U. S., 540, 548.

Roby *v.* Colehour, 146 U. S., 153.

Dewey *v.* Des Moines, 173 U. S., 193, 199.

Koekuk, &c., Bridge Co. *v.* Illinois, 175 U. S., 626, 634.

It has already been pointed out that the "Federal questions" were raised in the Court below; relied upon there, and by that Court decided adversely "by necessary intendment" to the claims of plaintiff in error.

Ante, pp. 19–26.

And where the Federal question was necessarily raised and must have been decided adversely to the claim of plaintiff in error this Court will not dismiss the writ of error.

Eureka Lake, &c., Company *v.* Superior Court, 116 U. S., 410.

Des Moines, &c., Co. *v.* Iowa Homestead Co., 123 U. S., 552.

Green *v.* Van Buskirk, 5 Wall., 307.

It is for this Court to say, and it is its duty under the Constitution to determine, whether in its decision the Supreme Court of South Carolina gave to the laws of New York and the contract made under those laws the same effect that such laws and contract have in the courts of New York.

Green *v.* Van Buskirk, 5 Wall., 307, 311, 314.

Christmas *v.* Russell, 5 Wall., 290, 302.

Mills *v.* Duryee, 7 Cr., 481, 483, 484.

Carpenter *v.* Strange, 141 U. S., 87, 103.

Dupasseur *v.* Rochereau, 21 Wall., 130, 139.

Huntington *v.* Attrill, 146 U. S., 657, 666.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 624.

Chicago, &c. R. Co. *v.* Sturm, 174 U. S., 710.

"It was insisted on the one side, and denied on the other, that the faith and credit which the judicial proceedings in the courts of the State of Illinois had by law and usage in that State, were denied to them by the Supreme Court of New York in the decision which was rendered.

"Whether this was so or not could only be properly considered when the case came to be heard on its merits; but this Court, in denial of the motion to dismiss, held that the Supreme Court of New York necessarily decided *what* effect the attachment proceedings in Illinois had by the law and usage in that State; and as it decided against the effect which Green claimed for them, this Court had jurisdiction under the clause of the Constitution which declares 'that full faith and credit shall be given in each State to the public acts, records and judicial proceedings in every other State,' and the Act of Congress of 1790, which gives to those proceedings the

same faith and credit in other States that they have in the State in which they were rendered."

Green *v.* Van Buskirk, 7 Wall., 139, 145.

That the opinion of the Supreme Court of South Carolina in the case at bar denies the claims of the plaintiff in error under the laws of New York, and denies full faith and credit to those laws is manifest upon the face of the opinion.

Transcript, pp. 97-101.

That the opinion is itself a part of the record in the case, and, therefore, may be looked to as such is shown by the certificate of the Clerk of the Supreme Court of South Carolina, wherein it is recited, "I do further certify that the opinion rendered by the Court in said case [is a] part of the record of said case."

Transcript, p. 116.

Hence, this Court may look to the opinion of the Supreme Court of South Carolina, as it does to opinions in cases coming up from the Supreme Court of Louisiana.

New Orleans Waterworks *v.* Louisiana Sugar Co., 125 U. S., 18, 27.
Egan *v.* Hart, 165 U. S., 188, 189.
Murdock *v.* Memphis, 20 Wall., 590, 633.

And a federal question having been raised and decided adversely to the contention of plaintiff in error, this Court has jurisdiction to determine this case upon its merits.

We think it has already been demonstrated that the Supreme Court of South Carolina refused to give full faith and credit to the laws and judicial proceedings of the State of New York.

The plain language of the New York statutes needs no interpretation or construction. Those statutes were merely denied effect by the Supreme Court of

South Carolina because that Court regarded itself as not bound "by comity" to give them effect. Thus the rule of constitutional obligation was ignored and the jurisdiction of this Court established.

What the New York law is we have already discussed sufficiently.

Admittedly the *O'Malley case*, relied upon and given in evidence by plaintiff in error, was a direct authority in support of the contention of plaintiff in error as to the meaning and effect of the New York law.

Transcript, p. 74; s. c., 92 Hun (N. Y.), 572.

It makes no difference that the O'Malley case was not decided by the court of last resort; it was not appealed from and has recently been followed in New York by the decision of a Court that in such a case, when the decision is unanimous, is a court of last resort.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
Code of Civil Procedure of N. Y. (1900), § 191.

That such decisions are entitled to full faith and credit in the courts of sister States is settled by the decisions of this Court.

Hollinger *v.* Davis, 146 U. S., 314, 319.

Besides, the decisions in the Court of Appeals of New York in the several cases which plaintiff in error gave in evidence upon the trial of this case below, construe the New York Acts of 1851 and 1875, and, together with the articles of association and by-laws of plaintiff in error, are conclusive as to the construction and effect of the New York statutes in question in New York.

Concordia Assn. *v.* Read, 93 N. Y., 474.
People *v.* Lowe, 117 N. Y., 175.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

Having now presented to this Court as clearly as we are able the very interesting questions involved, we, most respectfully, submit this case.

WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
Counsel for Plaintiff in Error.

D. A. PIERCE,
Of Counsel.

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Supreme Court of the United States,

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, Plaintiff in Error, vs. LAWRENCE S. WELLING and MARION BONNOITT, Defendants in Error.	No. 17,620.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

I.

THE TERM, "PUBLIC ACTS," IN ARTICLE IV., § 1, OF THE CONSTITUTION OF THE UNITED STATES, REFERS TO THE PUBLIC STATUTES OF THE SEVERAL STATES, AND MAKES IT A RULE OF CONSTITUTIONAL OBLIGATION THAT WHEN SUCH STATUTES ARE PLEADED AND GIVEN IN EVIDENCE IN THE COURTS OF A SISTER STATE, THEY SHALL HAVE THE SAME FORCE AND EFFECT IN THE COURTS OF SUCH STATE THAT THEY WOULD HAVE IN THE STATE WHERE THE STATUTE WAS ENACTED, WHENEVER SUCH STATUTE IS AN INTEGRAL PART OF A CONTRACT VALID IN THE STATE WHERE THE STATUTE IN QUESTION WAS ENACTED, SUCH CONTRACT BEING MADE AND PERFORMABLE IN SUCH STATE.

It was suggested from the bench, during the oral argument of this case, that the term "public acts"

in Article IV., § 1, of the Constitution of the United States did not include and was not synonymous with the word "statutes," and counsel for plaintiff in error was asked if there was any decision of this Court in which the term in question had been held to require that full faith and credit should be given in each State to the public statutes of a sister State, relied upon as forming an integral part of a contract entered into and performable in the State where the statute prevails. To the interesting constitutional question thus raised we briefly address ourselves.

"Without doubt the constitutional requirement of Article IV., § 1, that 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State,' implies that the public acts of every State *shall be given the same effect by the courts of another State that they have by law and usage at home.* * * * Whenever it becomes necessary, under this requirement of the Constitution, for a court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, *the law of that State must be proved as a fact.*"

Waite, *C. J.*, in Chicago & Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.

At the time of the adoption of the Constitution of the United States, the term "public acts" had a well settled meaning. It always referred to public statutes as distinguished from private statutes. "A general or public act is a universal rule that regards the whole community."

1 Blackstone's Commentaries, * p. 86.

Article IV., § 1, of the Constitution of the United States originated in the Committee of Detail in the Constitutional Convention, and in its original form was reported by that committee as follows: "Full faith shall be given in each State *to the acts of the Legislatures* and to the records and judicial proceed-

ings of the courts and magistrates of every other State."

"The Growth of the Constitution," Meigs, p. 254.
2 Madison's Papers, 1240.

When the clause thus reported by the committee of detail came before the Federal Convention for action, Mr. Randolph moved the following proposition: "Whenever the act of any State; whether legislative, executive or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other States as full proof of the existence of that act; and its operation shall be binding in every other State in all cases to which it may relate and which are within the cognizance and jurisdiction of the State wherein said act was done."

3 Madison's Papers, 1449.

At the same time Mr. Governeur Morris moved the following proposition on the same subject: "Full faith *ought* to be given in each State to the public acts, records and judicial proceedings of every other State; and the Legislature shall by general laws determine the proof and effect of such acts, records and proceedings."

These proposed forms of the clause in question, together with Article XVI. of the report of the committee of detail, were then referred to a committee consisting of Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Wilson and Mr. Johnson.

3 Madison's Papers, 1449.

This committee reported the clause back to the Federal Convention as Article XVI. in the following form: "Full faith and credit *ought* to be given in each State to the public acts, records and judicial proceedings of every other State; and the Legislature shall, by general laws, prescribe the manner in which such acts, records and proceedings shall be

proved and the effect which judgments obtained in one State shall have in another."

It is manifest that at this time the committee intended to provide expressly, *first*, how such public acts, records and judicial proceedings should be proved, and *second*, the effect which judgments obtained in one State should have in another, and that they did not then contemplate making an absolute requirement upon the courts of one State to give to the public statutes of another State the same meaning and effect that such statutes would have in the State of their enactment. This is shown by the fact that in the draft of the clause as reported the word "*ought*" is used instead of the word "*shall*," in the clause as it was finally adopted.

3 Madison's Papers, 1479.

The clause came up for consideration again in the convention on September 3, 1787, and a debate then occurred as to whether the meaning and effect of the provision should be limited by certain suggested changes *so as to restrain its meaning and effect to judgments and judicial proceedings.*

3 Madison's Papers, 1480, 1481.

"Thereupon, on motion of Mr. Madison, the words '*ought to*' were struck out and '*shall*' inserted; and 'shall' between 'Legislature' and 'by general laws' struck out and 'may' inserted *nem con.*"

3 Madison's Papers, 1481.

Thereafter the "committee on style" reported the clause in question as it now stands in the Federal Constitution.

"The Growth of the Constitution,"
Meigs, 256.

Manifestly, the purpose of the framers of the Constitution was to require full faith and credit to be given to the public statutes of each State when pleaded and

proved in the courts of a sister State in any case where rights had been established under such statutes, either by way of contract or otherwise, in the State passing the statute in question; and going a step further, the Constitutional Convention, after changing the term "ought" to the term "shall" so as to make the requirement of full faith and credit peremptory so far as the public statutes of sister States are concerned, authorized Congress to determine, first, how such public acts, records and judicial proceedings shall be authenticated, and, second, what effect shall be given in the courts of one State to the judgments and judicial proceedings of another State.

Congress is without power to change the meaning or qualify the effect of the first paragraph of Article IV., § 1, of the Constitution, and, consequently, has never attempted to do so.

"The clause of the Constitution propounds three distinct objects: First, to declare that full faith and credit shall be given the records, &c., of every other State; secondly, to prescribe the manner of authenticating them; and, thirdly, to prescribe their effect when so authenticated. The first is declared and established by the Constitution itself and is to receive no aid, nor is it susceptible of any qualification by Congress. The other two are expressly subjected to the legislative power."

2 Story on the Constitution (5th Ed.), § 1308.

Section 905 of the Revised Statutes of the United States establishes the effect to be given to the judgments of sister States, and provides for the authentication and proof of those public acts to which Article IV., § 1 of the Constitution as adopted requires that full faith and credit *shall* be given.

It surely must have been the intent of Congress to give effect to the constitutional provision in question, as applied both to judgments and to public acts, by providing as to the effect of the judgments and

as to the manner of authenticating and proving the acts. The acts of a sister State being thus authenticated and proven, it follows from the explicit language of the Constitution itself that full faith and credit must be given to such acts, and the term "full faith and credit" cannot reasonably be interpreted as having any other meaning than that in the construction of a contract or a corporate charter of which a statute of the State of the contract or corporate *situs* is an integral part, that such statute, when properly pleaded and proven, must be given the same force and effect by the Court considering the contract and the statute, that would have been given to such statute in the courts of the State where the contract was made and to be performed.

"'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.' The language is positive and declaratory, leaving nothing to future legislation."

2 Story on the Constitution (5th ed.), § 1309.

Whether in any case this doctrine should be extended, it is not necessary for us to discuss at this time or for this Court to determine now, but to deny the application of the constitutional provision for the purpose here indicated, is to make it possible for the courts of any State to absolutely nullify corporate membership contracts entered into in another State and valid under the public acts of such State, even though such contracts be made and performable in the State enacting such statutes, and be themselves regulative of the status of the corporation and its members.

We have assumed it to be settled law in this Court, as well as in the courts of many States, that in determining the rights of stockholders and members of a corporation in controversies between such members and the corporation growing out

of their contracts of membership and their status as stockholders, that the corporate charter and the public statutes of the State of the corporate *situs* fixing the corporate powers, enter into and form a part of the contract of membership, and must be given the same force and effect in the courts of other States that they are given in the courts of the corporate *situs*.

Chicago, &c., R. R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622.
Relfe *v.* Rundle, 103 U. S., 222, 225, 226.
Dailey *v.* People's B. L. & S. Ass'n, 172 Mass., 533.
Condon *v.* Mutual R. F. L. Assn. (Md.), 44 L. R. A., 149.
Clark *v.* Mutual R. F. L. Assn. (D. C.), 43 L. R. A., 390.
Howard *v.* Mutual R. F. L. Assn. (N. C.), 45 L. R. A., 853.
Taylor *v.* Mutual R. F. L. Assn. (Va.), 45 L. R. A., 621.
Campbell *v.* Eastern B. & L. Assn. (Va.), 37 S. E. Rep., 350.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298.

It was asked during the argument of this cause why the case had not been removed from the State court of first instance to the United States Circuit Court, and counsel for plaintiff in error replied that he did not know, as he had no connection with the litigation at that time; but, an examination of the record will show that in view of the form of action in the State court, the amount in controversy was probably regarded as only the $1,800 sued for as a penalty under the State statute for the alleged failure to discharge the mortgage of record, and hence, that the case was not removable to the United States Circuit Court, and the only remedy of the plaintiff in error was through a writ of error from this Court to the Supreme Court of South Carolina.

"If full faith and credit were not given to them

(the public acts of Illinois) by the Missouri Court in the judgment which has been rendered, that may entitle the Railroad Company to a review of the judgment here on a writ of error. But in no other way can this or any other Court of the United States invalidate that judgment on account of such mistakes if any were in fact made."

Chicago, &c., R. R. Co. *v.* Wiggins Ferry Co., 108 U. S., 18, 22.

That the term "public acts," in Article IV., § 1 of the Constitution of the United States, has the meaning here contended for is, we think, clear upon both reason and authority.

Unity *v.* Burrage, 103 U. S., 447, 454.

"The words '*act* of the Congress' are as strong and unequivocal as *statute* of the Congress."

Story, *J.*, in United States *v.* Smith, 2 Mason, 143, 151.

"Acts are general or special, public or private. All legislative acts are laws, and if not laws then they are not acts of legislation."

People *v.* Tiphaine (N. Y.), 3 Parker's Cr. Rep., 244; s. c., 13 Howard's Prac. (N. Y.), 76, 77.

II.

A CITIZEN OF ONE STATE, BECOMING A MEMBER OF A PURELY MUTUAL CORPORATION ORGANIZED UNDER THE LAWS OF ANOTHER STATE, BECOMES BOUND, AS TO HIS CONTRACTUAL OBLIGATIONS AS A STOCKHOLDER, BY THE LAWS AND STATUTES, THAT IS, THE "PUBLIC ACTS" OF THE STATE OF THE CORPORATE SITUS, AND WHENEVER HIS RELATIONS TO THE CORPORATION AND HIS CONTRACT OF MEMBERSHIP WITH IT ARE UNDER CONSIDERATION IN THE COURTS OF THE STATE OF HIS

DOMICILE, THE SAME FORCE AND EFFECT MUST BE GIVEN TO THE PUBLIC STATUTES OF THE STATE OF THE CORPORATE SITUS FIXING AND REGULATING THE CONTRACT OF MEMBERSHIP AND THE RIGHTS AND DUTIES OF THE MEMBER THAT WOULD BE GIVEN TO THEM BY THE COURTS OF THE STATE OF THE CORPORATE SITUS.

Chicago & Alton R. R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.
Relfe *v.* Rundle, 103 U. S., 222.
Dailey *v.* People's B. L. & S. Ass'n, 172 Mass., 533, 534, 535.

"The rights and benefits given by the laws of Connecticut in this regard are as much part of these contracts as if incorporated therein, not only because they are to be taken as if entered into there, but because there was the place of performance, and the stipulation of the parties was made with reference to the laws of that place."

Washington Central Bank *v.* Hume, 128 U. S., 195, 206, 207.

In such a case as the one at bar, to permit the Supreme Court of South Carolina to invalidate the contract between the defendants in error as stockholders in the plaintiff in error by denying validity to the New York statutes regulating the contract of membership, is not only to deny full faith and credit to the public acts of the State of New York, but comes, we respectfully submit, within the scope of the XIVth Amendment to the Constitution of the United States, and is a denial of the equal protection of the laws to the plaintiff in error.

Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.
Gibson *v.* Mississippi, 162 U. S., 565, 582, 583.
Ex parte Virginia, 100 U. S., 339, 346, 347.

Hence, even if this Court should hold that Article IV., § 1, of the Constitution of the United States is inoperative to require "full faith and credit" to be given to the public statutes of the State of New York forming a part of the contract between plaintiff in error and defendants in error as stockholders therein, yet, nevertheless, it would seem that this Court has full power and jurisdiction under the provisions of the XIVth. Amendment to prevent the Supreme Court of South Carolina from abrogating a contract, valid under the laws of New York and performable in that State, merely because one of the parties to the contract happens to be a citizen of South Carolina. The evil and far-reaching consequences of a decision of this Court permitting the annulment by State Courts of the contractual obligations of the members of corporations of sister States is too apparent upon the face of the record in this case to require elaborate discussion.

III.

UNDER THE CONTRACT OF MEMBERSHIP BETWEEN THE DEFENDANTS IN ERROR AND THE PLAINTIFF IN ERROR, DEFENDANTS IN ERROR WERE OBLIGATED NOT TO BRING ANY SUIT OR ACTION AGAINST THE PLAINTIFF IN ERROR ARISING OUT OF THEIR RIGHTS OF MEMBERSHIP THEREIN EXCEPT "IN THE COUNTY OF ONONDAGA AND STATE OF NEW YORK."

Original Brief for Plaintiff in Error, p. 7.

That such a provision as to the place of suit is valid and enforceable in the State of New York is beyond question.

Greve *v.* Ætna Live Stock Ins. Co., 81 Hun (N. Y.), 28, 30.

In a recent case decided by the Supreme Judicial Court of Massachusetts, *Mr. Chief Justice Holmes* delivering the opinion of the Court, a clause identical with the one in the case at bar was held to be a binding condition requiring a member of the corporation to sue in the State and County indicated. Passing upon this question *Mr. Chief Justice Holmes* says:

"As in our opinion the contract between the parties has not been ended, there is a further ground upon which their case is disposed of, which we thought in our earlier decision that it would not be necessary to consider. The certificate is granted in consideration, among other things, of 'full compliance with the terms and conditions printed on the back, all of which are hereby referred to and made a part of this contract.' One of the conditions is that 'any action brought against this association by any shareholder shall be brought * * * in the County of Ontario, State of New York.' We are of opinion that this condition should be enforced. We do not mean to overrule *Nute* v. *Hamilton Ins. Co.*, 6 Gray, 174, but it is obvious that that was a somewhat hesitating decision, and we think that it should not be pressed so far as to dispose of this case. Here we are dealing with a New York corporation, most of whose members would live in New York and the greater part of whose dealings and contracts would naturally take place also in New York. There we take it from *Greve* v. *Ætna Live Stock Ins. Co.*, 81 Hun, 28, which was put in evidence, the condition would be an answer to an attempt to sue in another county. The condition, at least so far as we have occasion to consider it, refers to suits by members of the corporation as such. It is perfectly reasonable, and as applied to a New York corporation, in view of the New York law, cannot be held contrary to the policy of Massachusetts with regard to such contracts as happen, by the ac-

cidents of post office communication, to be concluded on this side of the boundary line. The language is different from that used in *Nute* v. *Hamilton Ins. Co.*, and stronger. It plainly purports to attach a condition to the contract, and we are of opinion that it does so effectually. It is not intimated in *Nute* v. *Hamilton Ins. Co.* that when such a condition is attached to a contract and is valid there is any technical difficulty in enforcing it as an answer to an action in another place. It is true that in this case the question is not between counties but between States, and that our decision requires a resident of Massachusetts to go elsewhere for a remedy upon a contract made here (*Richard* v. *Manhattan Ins. Co.*, 31 Mo., 518, 520, 521). But objections of this sort may be made to appear more serious than they are. Courts are less and less disposed to interfere with parties making such contracts as they choose, so long as they interfere with no one's welfare but their own. The plaintiff might have given his money to the corporation if he had seen fit. We see no reason why he might not give it upon such partial return as he was content to accept. It will be understood that we are speaking of parties standing in an equal position, where neither has any oppressive advantage or power, and that our decision as to the validity of the condition as a defense does not go beyond the particular circumstances of this case. See further, *Matter of New York, Lackawanna & Western R. R.*, 98 N. Y., 347, 453; *Heslin* v. *Eastern Building & Loan Assn.*, 28 Misc. (N. Y.), 376; *Carpenter* v. *Shepherdson*, 43 Wis., 406, 413."

Judgment for defendant.

Dailey *v.* The People's B., L. & S. Assn., Supreme Judicial Court of Mass., decided February 27, 1901, not yet reported.

We copy the foregoing extract from a certified copy of the opinion.

Having thus reviewed the most interesting questions that were mooted upon the oral argument of this case, we now respectfully submit the same for final determination by this Court, but in doing so, we venture to refer the Court to the brief heretofore filed by us in No. 453 (Eastern Building & Loan Assn. *v.* Ebaugh) in opposition to the motion made by defendant in error in that case to dismiss the writ of error upon the ground that no Federal question is involved.

Respectfully submitted,

WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
For Plaintiff in Error.

D. A. PIERCE,
Of Counsel.

Office Supreme Court U.S.
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No. 190.

Brief of Smith for D. C.

Filed Mar. 7, 1901.

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N.Y., Plaintiff in Error,

vs.

LAWRENCE S. WELLING AND MARION BONNOITT, Defendants in Error.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

BRIEF OF ARGUMENT ON BEHALF OF DEFENDANTS IN ERROR.

HENRY A. M. SMITH,
ATTORNEY FOR DEFENDANTS IN ERROR.

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22021

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STATEMENT OF FACTS.

The Plaintiff in Error herein is a Building and Loan Association, which for the purpose of extending its business, issued and circulated certain advertisement circulars for the information and inducement of intending members or borrowers.

This inducing circular in the present case will be found on pages 39 to page 46, both inclusive, of the Printed Transcript of Record, and is styled "Exhibit D," or the "*Definite Contract Plan.*"

This is the first circular or paper to be considered in connection with the present case.

At the bottom of p.41 of the Printed Transcript will be found the representation to shareholders, in which it is stated as follows :

"All shares on which payments are made are regularly matured at "the expiration of 78 months. (Six and one-half years from the date "of the certificate)."

So in what is called the "Short Catechism," stating the objects and results of this institution, beginning on p. 40, on p. 41, (5th line from top of page) is found this question :

"Q. When will the shares reach their par value ?
"A. Shares mature in exactly six and one-half years."

And on the back of the cover of the same circular to draw more attention, it is stated (as is set out, page 46, *Printed Transcript*,) "Stock matures in 78 months."

Again, in the same circular (page 43, of the *Printed Transcript*)in the illustration given, there is shown the costs and profits to the investor of 10 shares in six and one-half years, the time of maturity.

The entire statement therefore repeatedly made in this circular, furnished as information to any one intending to become a member, is that the stock was to mature in six and one-half years.

Induced by this circular, the defendants in error, Welling and Bonnoitt, made application for fifty shares of the stock. (See application in *Printed Transcript*, page 46).

Upon this application and the payment of the necessary membership fee of $50, a certificate of shares for fifty shares was issued to Welling and Bonnoitt. (See certificate of shares, *Printed Transcript*, p. 47, "Exhibit F.")

This certificate of shares expressly states that Welling and Bonnoitt are entitled to the number of shares applied for and proceeds as follows in the body : (on p. 47.)

"And the said Eastern Building and Loan Association of Syracuse, "N. Y., agree to pay said shareholders, or their heirs, executors, ad-"ministrators or assigns, the sum of one hundred dollars, for each of " said shares, *at the end of 78 months from the date thereof*."

Then, again, it appears from the said certificate of shares that the shareholder agrees to pay a monthly instalment of 75 cents on each share named in the contract until such shares mature or are withdrawn; that is to say, until the expiration of six and one-half years, or 78 months—unless sooner withdrawn. This certificate of shares is dated 2nd February, 1891. (*Transcript*, p. 49.)

Thereafter, on the 6th day of April, 1891, Welling and Bonnoitt made application to the Eastern Building and Loan Association of Syracuse, N. Y., for a loan of five thousand dollars. The application for this loan will be found marked "Exhibit G," (on page 49 of the *Printed Transcript*).

The application for this loan was accepted by the Building and Loan Association, and Welling and Bonnoitt for the same thereupon executed and delivered to the Association 78 promissory notes, viz: 75 notes for $79.20, and 3 notes for $41.70, copies of which notes will be found in the *Printed Transcript* as "Exhibit C 1," and "C 2," on page 39.

To secure these notes, Welling and Bonnoitt also executed a mortgage (See *Printed Transcript*, pp. 36-38, "Exhibit C,") whereby they mortgaged to the Building and Loan Association, certain real estate in the Town of Darlington, and County of Darlington, and State of South Carolina.

The mortgage provided as follows (p. 37):

"This grant is intended as a security for the payment of the sum of "sixty-one hundred seventy-seven and $\frac{60}{100}$ dollars, the same being the "principal, interest and premium, of a loan from said Association, "which said loan was made pursuant to and accepted under the pro-"visions of the By-Laws of said Association, and which said By-Laws "have been read by the mortgagors and are hereby made a part of this "contract, which said loan is evidenced and secured to be paid by "seventy-eight (78) certain promissory notes of even date herewith, "executed by the said Lawrence S. Welling and Marion Bonnoitt, "payable to the said Association, at its office in Syracuse, as follows: "One of each of said notes is to be paid on or before the last Saturday "of each and every month, until all of the seventy-eight notes are fully "paid."

These notes and mortgage having been executed, Welling and Bonnoitt paid all their notes, which were regularly

received by the Eastern Building and Loan Association up to the note maturing the last Saturday in August, 1897, for $41.70—that is to say, they paid the whole of the seventy-five notes for $79.20, and sent on the money to pay the first of the three notes for $41.70, maturing on the last Saturday of August, 1897.

The letter of Welling and Bonnoitt sending on this amount on August 23rd, 1897, will be found as "Exhibit H" (*Printed Transcript*, page 50.)

The answer of the Building and Loan Association to this letter of Welling and Bonnoitt will be found (*Printed Transcript*, page 50,) dated August 28th.

In this, they state to Welling and Bonnoitt that the amount remitted is not sufficient to meet the entire payment, owing to the fact that the shares had not matured in the estimated period of 78 months. The letter goes on to state that in the early history of the Association, it was thought that the monthly payment of 75 cents per share would mature the shares in 78 months, but that it had been found that that was a mistake, and that they would not mature in that period. Nor would they mature until the full maturity value of one hundred dollars had been paid, allowing for the deductions due to intervening losses by the Association; and it would be necessary for shareholders to continue full payments, and Welling and Bonnoitt must therefore continue to pay $79.20 per month until this indefinite period was reached.

At the time that this loan was made to Welling and Bonnoitt, May 1st, 1891, they had withdrawn from their position as shareholders in the Association, and an endorsement to that effect was made upon all of the fifty shares of stock held by them. (*Printed Transcript*, p. 49.)

Welling and Bonnoitt insisted that under their mortgage they were only bound to pay the exact amount of the notes specified therein, and as their notes for $41.70 matured, remitted enough to pay them in full.

The Building and Loan Association refused to receive these amounts on the ground that in the letters remitted them, they were instructed to apply them to the notes; whereas,

Welling and Bonnoitt were liable for the payment of the full monthly subscriptions as shareholders, and the payment of the notes would not satisfy the mortgage.

The defendants, Welling and Bonnoitt, having thus paid, or remitted to be paid, the full amount of all the notes mentioned in their mortgage, made a demand on the Building and Loan Association to duly satisfy the mortgage.

By the law of South Carolina (Rev. Stat., Secs. 1894 and 1895,) it is provided that any person who shall have received full satisfaction, or to whom legal tender shall have been made of his debt secured by a mortgage of real estate, shall, at the request of the mortgagor, or of his legal representative, and on tender of the fees of office for any such legal satisfaction, within three months after the request, enter such satisfaction in the proper office, and in default of so doing, he shall forfeit and pay to the party aggrieved a sum of money not exceeding one-half of the sum of money secured by the mortgage, to be recovered in any Court of competent jurisdiction in the State. (See Sections of Revised Statutes in Appendix to this Argument.)

Welling and Bonnoitt thereupon, on the 28th September, 1897, duly tendered to the Eastern Building and Loan Association the costs and fees of the office for entering the satisfaction, and required them to have satisfaction entered on the mortgage, which they declined to do, and three months after the refusal to do so, this action was brought in the Court of Common Pleas for Darlington County, under the Statute to recover damages for such refusal.

In defense to the action for damages, the Building and Loan Association set up in the Court of Common Pleas for Darlington County, in the State of South Carolina, that the mortgage was not satisfied, and that they were not bound to satisfy the same when called upon. That it was not satisfied, because by the terms of the mortgage it secured two things :

First. The payment of the 78 notes mentioned therein (75 for $79.20, and 3 for $41.70), and

Second. That it secured in addition the payment of all the dues and assessments of shareholders in the corporation

until their share reached a full maturity value of $100; that the corporation had estimated that these notes would mature in 78 months, or six and one-half years; and had so represented to intending shareholders; but that it had been mistaken in that estimate, and by the laws of New York (the Association being a corporation under the laws of New York) it had no right to allow shares to mature until the full maturity value had been reached; and that that maturity value could not be reached until after taking into consideration all payments by shareholders and debiting each with his share of all the Company's losses applicable to his shares, the full average par value of $100 was shown to have been reached.

The question came on for trial before the Court of Common Pleas for Darlington County therefore, upon the questions :

First. Under the construction of the mortgage, what did it secure ? Only the notes representing the loan; or did it in addition secure under its terms the indefinite continuous payment by the shareholders of their monthly dues ?

Second. Were the defendants still shareholders in the corporation, or had they, when they received the loan, withdrawn wholly from the corporation, so as to be no longer liable for dues thereon, and no longer therefore bound under their mortgage to pay the same ?

Third. Had the mortgage been paid and satisfied ?

On the trial in the Court of Common Pleas for Darlington County (the Circuit Court), the Presiding Judge ruled that under the terms of the mortgage it secured only the payment of the 78 notes mentioned; and that when these notes had been paid, the mortgage was satisfied, and that the mortgage did not secure the payment of any dues and assessments by shareholders (*Printed Transcript*, p. 91). The Presiding Judge in the Circuit Court therefore held that the mortgage was cancelled, and that the plaintiffs were entitled to recover; and the jury rendered a verdict in favor of the plaintiffs.

The defendant, the Building and Loan Association, appealed to the Supreme Court of South Carolina, on the ground that his Honor, the Presiding Judge, was in error in his ruling,

inasmuch as under the provisions of the laws of the State of New York, the Eastern Building and Loan Association, being a corporation under the laws of that State, the mortgage construed in connection with the laws of New York should be construed so as to secure the payment by the shareholders of their monthly assessments on their shares in addition to the notes given for the loan, and that under such construction the mortgage was not paid and satisfied, and the Building and Loan Association were not bound to satisfy it upon demand.

The case having come on to be heard before the Supreme Court of South Carolina, the Court affirmed the decision below on the ground that the proper construction of the mortgage, taken in connection with the circular known as the "*Definite Contract Plan*," was, that all that was secured by the mortgage was the 78 notes, and that when they were paid, the mortgage was satisfied; and thereupon affirmed the decision below.

After so deciding, the Court goes on to say, however, that it was contended by the appellant, the Eastern Building and Loan Association, that the agreement and By-Laws were to be construed according to the laws of the State of New York, and the Court thereupon announces as its opinion, that this was not the case; and that even if it were, comity between the different States did not require the law of one State to be executed in another when it would be against the public policy of the latter State.

From this decision of the Supreme Court of South Carolina, a writ of error has been sued out to this Court upon the assignment of error, as Federal questions, that the Supreme Court of South Carolina erred in refusing to give full faith and credit to the public acts, records and judicial decisions of the State of New York, inasmuch as it appeared by these public acts, records and judicial decisions, that the Building and Loan Association incorporated under the laws of New York had no right to mature their shares in a less period than a period sufficient to fully pay them up, at par value; that the mortgage in the present case was to be construed accord-

ing to the law of New York; and that therefore the Supreme Court of South Carolina, in failing to construe it as securing in addition to the notes mentioned therein, the payment by shareholders of the monthly assessments on their shares until the same were fully paid up, and discharged up to their par value, failed and refused to comply with the provisions of the Constitution of the United States, and failed to give full faith and credit to the public acts, records and judicial decisions of New York, and also thereby changed the settled construction of such Statutory provisions of the State of New York, so as thereby to impair the obligation of the contract between the parties, and to deprive the Association of its property without due process of law.

Under the appeal now before this Court, therefore, three questions come up :

First. Does the question upon which the State Courts decided the case, i. e., the construction of the mortgage, involve any Federal question ?

Second. If any Federal question was involved in the case, was its decision absolutely necessary to the decision of the cause, or could the result have been reached upon grounds not involving a Federal question ?

Third. Did the Supreme Court err in its decision on any Federal question involved, and actually set up and made before it ?

ARGUMENT.

Before taking up the assignments of error *seriatim*, we propose to advert to the principles of law applicable to the treatment of a writ of error from this Court to the Supreme Court of a State in like cases.

1st. Where a case has been decided by the State Court on an independent ground broad enough to maintain the judgment, and not involving a Federal question, this Court will dismiss the writ of error without considering the Federal

question, although the latter was also decided by the State Court.

Pierce vs. Somerset Ry., 171 U. S., 641.
McQuade vs. Trenton, 172 U. S., 636.
Harrison vs. Morton, 171 U. S., 38.
Bacon vs. Texas, 163 U. S., 207.

2nd. It must appear not only that the Federal question was absolutely necessary to be decided by the State Court, but that the result of the judgment in the State Court could not have been arrived at, without its deciding the Federal question adversely to the plaintiff in error.

Harrison vs. Morton, 171 U. S., 38.
Chapman vs. Goodnow, 123 U. S., 540.
Cook Co. vs. Calumet, 138 U. S., 635.
Johnson vs. Risk, 137 U. S., 300.
DeSaussure vs. Gaillard, 127 U. S., 216.

3rd. It must so appear by clear and necessary intendment from the record itself, and neither the arguments of counsel, nor the assignments of error, nor the opinion of the Court below, can be examined for this purpose. The *dicta*, or observations, or reasoning of the Court, in the opinion upon which the judgment appealed from is based, have nothing to do with the question, nor can they be looked to for the purpose of finding whether a Federal question was necessarily involved.

Gibson us. Chouteau, 8 Wall., 314.
Fowler vs. Lamson, 164 U. S., 252.
Henkel vs. Cincinnati, 177 U. S., 170.

4th. The rules of the State Courts on all questions of local or domestic import, and especially in the construction of instruments relating to the acquisition, alienation, transfer, or encumbering of real estate, are binding upon the Federal Courts.

Each State controls all rules of law applicable to the alienation, acquisition or encumbering of real estate within its limits, and the fact that these rules differ from the rules

prevailing in other States, or that one State refuses to give effect so far as the real estate within its own limits is concerned, to the rules of law, governing the acquisition, alienation, or encumbering of real estate in any other State, constitutes no Federal question.

Warburton vs. White, 176 U. S., 484.

Knapp, Stout & Co., vs. McCaffrey, 177 U. S., 638.

5th. The construction and effect given to a paper purporting to be a conveyance or mortgage of real estate as laid down and settled by the Supreme Court of a State is binding upon all Federal Courts.

De Vaughn vs. Hutchinson, 165 U. S., 566.

Missouri, Kansas, etc., Trust Co. vs. Krumseig, 172 U. S., 351.

Brine vs. Insurance Co., 96 U. S., 627.

6th. The decisions of State Courts as to the construction of contracts declared by the State Court to be affected by the general principles of public policy of the State are binding on Federal Courts, unless the question was that the State itself had, by legislation, impaired the obligation of the contract.

Delmas vs. Ins. Co., 14 Wall., 661.

7th. A contract can only be impaired within the meaning of the provision of the United States Constitution by some subsequent Statute, or constitutional provision of the State which has been upheld or given effect to by the State Court, or by a change in the judicial construction of a Statute from a construction previously made, and not by a judicial construction of the contract upon the general principles of the jurisprudence of the State.

Bacon vs. Texas, 163 U. S., 207.

We proceed now to take up the questions developed by the assignments of error in the case at bar.

Was the Case Decided by the State Court on any Federal Question?

The entire issue in the case was :

Has the mortgage been satisfied ?

This issue depended on the question of what was secured to be paid by the terms of the mortgage. According to the contention of the plaintiff in the State Court (defendants in error here), the mortgage secured only the payment of a certain specific sum of money represented by 78 promissory notes.

According to the contention of the defendants (plaintiffs in error here) the mortgage secured additionally the payment of certain dues, assumed by Welling and Bonnoitt, as shareholders in the Building and Loan Association.

This last question was complicated by the claims of Welling and Bonnoitt, that they had long ceased to be such share holders, and were not liable for any such dues, and also that before making the loan, all the Association had was their personal responsibility unsecured by any mortgage, and that by giving the mortgage for a definite loan they did not give it also to secure an indefinite shareholder's liability

The first question contained no complicating issues.

It was admitted as a matter of fact that all the 78 notes mentioned in the mortgage had been paid, or payment in full tendered. This left only the bare question whether the mortgage was thereby satisfied and discharged as a mortgage lien.

This was the question decided by the State Courts.

The State Circuit Court decided the question on this alone. (See decision of State Circuit Judge, *Printed Transcript*, p. 91.)

The State Supreme Court affirmed this decision, and affirmed it on this ground.

The Court says (*Transcript*, p. 99) :

"The first and main question that will be considered, is whether "there is error on the part of the Circuit Judge in his construction of "the contract ?"

The Court then goes on and affirms the construction of the Circuit Judge—on the ground that the mortgage properly construed, secured only the payment of the 78 notes.

Following a rule of construction that had already been laid down by the Court.

Williamson vs Association, 54 S. C., 582.

After so affirming the judgment below, the Court proceeds to remark upon the claim of the appellant (the plaintiff in error here), that the mortgage should be construed according to the laws of New York, and on that point observes that even if the law of New York were to the effect claimed by the appellant, as such law would be against the policy of South Carolina, it would not be enforced in the latter State as to land therein.

An inspection of the judgment made by the Supreme Court of the State shows that it decided that the mortgage in question construed according to its terms under the law of South Carolina, secured the payment only of the 78 promisory notes, and those notes having been paid, the mortgage was satisfied.

The Ground Stated Broad Enough to Support the Judgment.

It will hardly require argument to show that the construction of a deed or mortgage of real estate is peculiarly for the domestic tribunals of a State.

A mortgage or conveyance goes on record. When there, it is to be treated as notice to the world of the extent of the alienation or encumbrance.

What, therefore, is good as a mortgage, and to what extent it is good, and exactly what land, and for how long, and for what amount, this mortgage enures over, and as an encumbrance, is for the determination of the State in which the land is situate, and its tribunals.

In this present case the plaintiff in error (the defendant in the State Court) sought to import into the mortgage two contracts; one an obligation to repay a loan, and the other a statutory contract alleged to exist under the laws of New

York, between a New York corporation and its stockholders, whereby the latter were bound to pay certain dues.

The claim was made in the State Court that the mortgage secured the performance of both these contracts, and the attempt was made to have the State Court construe the laws of New York and enforce it.

This last, the State Courts declined to do.

The State Courts in effect said that the case did not require any construction or enforcement by them of the law of New York. That the case before the Court was not one for the enforcement of the contract between the corporation and its shareholders. Such might involve the question of what, under the law of New York, was the contract between the New York corporation and its shareholders.

If the Building and Loan Association had brought an action in the Courts of South Carolina to recover from one of its shareholders, his dues as such, then the question of the contract relation between corporations and shareholders might arise.

But the case before the Court was :

What did the mortgage secure ?

Having come to the conclusion that the mortgage secured only the payment of a specific sum of money, and not the obligations of the shareholders to the corporation, it became wholly unnecessary for the State Court to consider and pass upon those obligations of the law of New York respecting them.

This was certainly broad enough to support the judgment.

If the mortgage secured only the payment of the 78 notes, then the State Court was clearly right in holding that their payment satisfied the mortgage—and such ground was unquestionably broad enough to support the judgment.

The contention of the plaintiff in error here is really that the State Court erred in ruling that the mortgage only secured the 78 notes. That it was bound to rule that the mortgage secured additionally the payment of dues of shareholders, and the failure of the State Court so to find was a failure to enforce the statutory obligation created by the laws of New York.

We submit that under the decisions cited, this Court cannot correct the decisions of the Supreme Court of South Carolina, even if erroneous in this respect.

It is at the least a fair ground for the construction of the mortgage, that it secured only the payment of the 78 notes. No Federal question is involved in that construction.

If the State Court arrived at that construction, and declined to consider the Federal question, this refusal to consider an unnecessary Federal question is no ground for reviewal here.

The Alleged Federal Questions.

The Federal questions sought to be raised by the assignments of error are three in number :

First. That the Supreme Court of South Carolina, by its decisions, refused full faith and credit to the public acts of the State of New York.

Second. That by its decision it impaired the obligation of a contract between the parties.

Third. That it deprived the plaintiff in error of its property without due process of law.

The Denial of Full Faith and Credit.

No claim of any Federal question was made before either the Circuit or Supreme Court of the State.

The question made before the Circuit Court—the trial Court—will be found in the pleadings (*Transcript*, pp. 2-6,) and in the rulings asked of and made by the Presiding Judge. (*Transcript*, pp. 90-93). The questions made before the Supreme Court are limited to the exceptions to the judgment of the Circuit Court. (*Transcript*, pp. 93-94). In none of these will appear any claim that under the Constitution of the United States the Laws of the State of New York controlled the construction of the mortgage because of the Constitutional requirement of faith and credit.

To justify this Court taking jurisdiction on a writ of error to a State Court, the Federal question must have been so

specially set up and claimed in the State Court as that the attention of that Court was called thereto as one relied on by the party, and the decision of that Court must have necessarily involved the denial of the claim.

Oxley Stave Co. vs. Butler County, 166 U. S., 648.
Dewey vs. Des Moines, 173 U. S., 193.
Keokuk, &c., Bridge Co. vs. Illinois, 175 U. S., 633.

The question appears for the first time in the petition for a rehearing filed in the State Supreme Court (after the *remittitur* had gone from that Court back to the Circuit Court); and a question set up for the first time in such a petition is too late to bring the case within the appellate jurisdiction of this Court.

Bushnell vs. Crooke Mining Co., 148 U. S., 682.
Loeber vs. Schroeder, 149 U. S., 580.
Sayward vs. Denny, 158 U. S., 180.

The claim must have been so set up in the trial Court below. If not so set up in that Court, then, although the State Supreme Court, in affirming the decision of the lower Court, expressly decide against a right claimed under the laws of the United States, this Court has no jurisdiction to review the decision affirming the judgment of the trial Court.

Chemical Nat. Bk. vs. City Bank, 160 U. S., 646.

The alleged denial of full faith and credit to the public acts, records and judicial proceedings of the State of New York, consists in the contention that the Supreme Court of South Carolina should have held the mortgage as securing the performance of shareholders' duties, and then have construed and enforced those duties according to the laws of New York.

The mortgage is not a New York contract. It was made in South Carolina, by citizens of South Carolina, and covers real estate in South Carolina (*Printed Transcript*, p. 36, Ex. "C.") No mention of the State of New York or its laws appears in the mortgage.

The general rule as to all contracts affecting real estate, whether by way of alienation or encumbrance, is that they are controlled as to form and method of execution, and as to effect and construction by the *lex loci rei sitæ.*

Green vs. Van Buskirk, 5 Wall., 307.

The "faith and credit" clause of the United States Constitution and of Rev. Stat., Sec. 905, has received full discussion in this Court.

It has come before the Court in the shape :

a. Of the effect to be given to a judgment recovered in another State.

b. Of the effect to be given to a Statute passed in another State.

In the case of judgments, "full faith and credit" has been finally settled to be the giving to a judgment recovered in any State, appearing to have jurisdiction of parties and subject matter, all the force and effect which it should have as *res adjudicata* or estoppel, as to all the defenses that could have been set up in the *fori* of the State in which judgment was recovered.

Cole vs. Cunningham, 133 U. S., 107.
Huntingdon vs. Attrill, 146 U. S., 685.

Although a judgment in the State in which it was recovered, it does not become a judgment in any other State, until passed on, and also reduced to judgment therein.

McElmoyle vs. Cohen, 13 Pet., 312.

Although it may have certain incidents as a judgment in the State where it was first recovered, such as that of a lien on real estate, it does not possess those incidents in any other State, unless the same be incident to all other judgments therein.

Cole vs. Cunningham, supra.

Where the rules of law in one State give a certain construction to wills and deeds affecting real property within that State—the fact that by judgment a different construction

is given to such document in another State, does not conclude the matter, but such judgment may be disregarded as inoperative on real estate, without the jurisdiction of the State in which it was recovered.

Blount vs. Walker, 134 U. S., 607.
Clarke vs. Clarke, 178 U. S., 186.

Any judgment recovered can always be inspected to see if the Court which rendered it had jurisdiction of the subject matter or the parties, so as to make it valid and binding.

Pennoyer vs. Neff, 95 U. S., 714.

From these principles it follows that in the case of judgments, "full faith and credit" does not mean that the judgment is to be given the full force and effect with the incidents that it possessed in the State where it was recovered, but only that if it appears that the Court which rendered it, had jurisdiction, then it is to be given the effect of a final adjudication upon all questions between the parties that could have been passed upon in the forum where recovered, and not at variance with any rules of law, regarding matters of domestic real estate or regulations in the forum in which such judgment may be set up.

Applying the same principles to Statutes, it follows that the Statute law of one State can have no force in another State except as applicable to matters within the jurisdiction where enacted.

It is trite to say that Statutes have no extra-territorial force.

The people of New York cannot pass laws for the State of South Carolina.

A corporation created by the State of New York, may have by Statute special privileges and powers in New York, but if it leaves New York to do business in another State, it does not carry those privileges and powers.

It carries to such other State only such powers and privi-

leges as by the law of such other State, foreign corporations in general are allowed to have and exercise.

A Statute imposing penalties in one State is not enforceable in another State.

Huntingdon vs. Attrill, 146 U. S., 657.

The giving faith and credit to the Statute of another State comes then to this :

The Statute or law of another State, when properly proven, must be taken as valid, and as having *in the State which passed it, and upon all persons and subject matter properly subject to its jurisdiction,* the effect given by its terms, or by the Courts of that State.

One State cannot legislate as to the real estate, or the mortgages thereon, in another State, and therefore it is not to deny faith and credit to a Statute to hold that outside the jurisdiction of the State, which passed it, such legislation had as to subject matter and persons in another State, no effect at all.

Clarke vs. Clarke, 178 U. S., 186.

Great Western Telegraph Co. vs. Purdy, 162 U. S., 329.

In the present case the Supreme Court of South Carolina has neither given or refused to give effect to the law of New York. It has held that law neither valid nor invalid. It has simply held it inapplicable; and the decision of a State Court, construing or holding the law of another State inapplicable, is not reviewable here.

Lloyd vs. Matthews, 155 U. S., 222.

The additional dictum of the Supreme Court of South Carolina to the effect that no State is bound to recognize or enforce contracts which are injurious to the welfare of its people, or which are a violation of its own laws, is a citation from the case of *"Pope vs. Hanke,"* decided by the Supreme Court of Illinois, and reported in 28th L. R. A., 568; and followed by the inference of the Supreme Court of South Carolina that it appears from the authorities that the State of

South Carolina is not compelled from mere comity to recognize the laws of the State of New York.

This is simply an additional answer adduced in the opinion of the Court, to the argument and claim of the counsel for the plaintiff in error. The Court had already decided in its opinion that their conclusion as the proper construction of the contract was that under the wording of the mortgage, it secured only the payment of certain specific notes.

It then went on to say that the appellant in that Court (the plaintiff in error here) contended that the mortgage agreement and By-Laws were to be construed under the laws of New York.

The Supreme Court of South Carolina then goes on to say that these contracts were enforceable by the Courts of South Carolina, and referred to property situated within the limits of the State of South Carolina, and are to be construed under the laws of New York, only in so far as by comity the State of South Carolina gives effect to those laws.

It is evident that the Supreme Court of South Carolina is not dealing with the Constitutional provisions of the United States, which require them to give full faith and effect to the records, laws and judicial proceedings of the State of New York; for that Constitutional provision is applicable only to such subject matter and persons as are within the jurisdiction of the State of New York.

If the case before the Court had been a case where the State Court of South Carolina was construing a mortgage of land in New York, or was *giving* effect to a statutory right acquired under the laws of New York, it would be bound under the Constitutional provision to give such effect to the laws of New York as would in the State of New York be given; but it is not bound to give such effect to the laws of New York as would in the State of New York be given to the subject matter within that State, when the subject matter of the litigation is within the State of South Carolina. New York can undertake to legislate neither as to real estate situate within the State of South Carolina, nor as to contracts and domestic regulations between citizens of South Carolina or

between citizens of other States, to be made, executed and performed within the State of South Carolina, and enforced by the Courts of South Carolina. It is evident that the application intended to be given by counsel for plaintiff in error to the language of the Supreme Court of the State of South Carolina on this point, is wholly misplaced. That the Supreme Court of South Carolina simply intended to say that the legislation of New York, in so far as it was sought to be applied to matters strictly within the scope and jurisdiction of the State of South Carolina, had only such effect and application as by comity would be by the Courts of South Carolina given to the same; and in the statement of which principle of law on that point the State of South Carolina was perfectly right and justified by the soundest principles of Constitutional law.

Huntingdon vs. Attrill, 146 U. S., 657.

Impairment of Contract.

The claim of a Federal question in that any contract was impaired, is set up for the first time in this Court.

It was not set up before the Court of Common Pleas (the Circuit Court) in South Carolina. (*Printed Transcript*, pp. 90, 91.)

It was not set up before the Supreme Court of South Carolina. (*Printed Transcript*, pp. 93, 94.)

The rule in this Court is, that if the Federal question has not been raised in the State Court, it cannot be set up for the first time here.

Chicago and Northwestern Ry. vs. Chicago, 164 U. S., 454.

Capital National Bk. vs. First National Bk., 172 U. S., 425.

Keokuk &c. Bridge Co. vs. Illinois, 175 U. S., 633.

Where only one Federal question was raised in the State Courts, the party raising it cannot, on writ of error to the Court, argue any other Federal question in addition thereto, not raised in the State Court.

Dewey vs. Des Moines, 173 U. S., 193.

This additional Federal question that a contract was impaired, appears for the first time in a petition to the Supreme Court of South Carolina for a re-hearing (which petition was dismissed on the ground that the remittitur had gone to the lower Court, and the Supreme Court had lost jurisdiction, *Transcript*, p. 108), and later in the assignment of errors for this Court. (*Transcript*, pp. 113-115.)

"The record discloses no Federal question asserted in terms save in "the application to the Supreme Court for a re-hearing when the sug- "gestion came too late."

Capital Natl. Bk. vs. First Natl. Bk., 172 U. S., 425.

It never was made in either the Circuit Court or the Supreme Court of South Carolina, until after final judgment.

We do not moreover exactly understand what the meaning of the contention in the present case is.

The prohibition in the Constitution is against any State passing an Act impairing the obligation of a contract. This has been construed to mean that no State can by any Statute or Constitutional provision impair the obligation of existing contracts—nor can such impairment be effected by a State Supreme Court reversing a settled construction of a Statute or Constitutional provision under which settled construction contracts have been entered into.

There is nothing of the kind in the present case. The State of South Carolina has taken no action, legislative or constitutional, affecting the present agreement. Nor has the Supreme Court of South Carolina made any decision in the present case reversing any previous rulings of its own, or changing its construction of any Statute.

The mistake seems to arise from the belief on the part of the counsel for plaintiff in error that Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, were enacted in 1893, after the making of the mortgage in the present case.

This is a misapprehension. The Act embodying the provisions of those Sections was enacted in 1817 (Stat. at Large, So. Ca., Vol. VI, p. 61.)

The Statutes of South Carolina were revised, i. e., all embodied in one volume as in the case of the United States Revised Statutes, in 1893, and these Sections therein incorporated as existing and continuing law.

Denial of Due Process of Law.

Neither was any such Federal question as this made before the State Courts.

This question, like that of the impairment of a contract, appears for the first time in the petition to the State Court for a re-hearing (long after final judgment) and in the assignment of errors.

As the plaintiff in error had a full hearing and trial before the Circuit Court and Supreme Court of South Carolina, it is impossible to see how, under the decision, the judgment rendered it can be said to have been rendered without due process of law.

Pennoyer vs. Neff, 95 U. S., 714.

EXTRACT FROM REVISED STATUTES OF SOUTH CAROLINA OF 1893.

Sec. 1894. Any person who shall have received full payment or satisfaction, or to whom a legal tender shall have been made of his debt, damages, costs and charges, secured by mortgage of real estate, shall, at the request of the mortgagor, or of his legal representative, or of any other person being a creditor of the said debtor, or a purchaser under him, or having an interest in any estate bound by such mortgage, and on tender of the fees of office for entering such satisfaction within three months after such request made, enter satisfaction in the proper office on such mortgage, which shall forever thereafter discharge and satisfy the same.

Sec. 1895. Any person having received such payment, satisfaction or tender as aforesaid, who shall not, within three

months, by himself or his attorney, after request and tender of fees of office, repair to the said office and enter satisfaction as aforesaid, shall forfeit and pay to the party aggrieved a sum of money not exceeding one half of the amount of the debt secured by mortgage as aforesaid, to be recovered by action in any Court of competent jurisdiction within the State; and on judgment being rendered for the plaintiff in such action, it shall be the duty of the Presiding Judge to order satisfaction to be entered on the judgment or mortgage aforesaid, by the Clerk or Register, or other proper officer, whose duty it shall be, on receiving such order, to record the same, and to enter satisfaction accordingly.

NOTE.—The foregoing Sections of the Revised Statutes are the same as Sections 1791 and 1792 of the General Statutes of 1882, and Sections 1 and 2 of the Act of 1817. See Stat. S C., Vol. VI, p. 61.

Henry A. M. Smith.

22033

Supreme Court of the United States.

No. 190.—October Term, 1900.

The Eastern Building and Loan Association of Syracuse, New York, Plaintiffs in Error, *vs.* Lawrence S. Welling and Marion Bonnoitt. } In error to the Supreme Court of the State of South Carolina.

[April 8, 1901.]

This action was commenced in the Court of Common Pleas of Darlington County, South Carolina, by Welling and Bonnoitt to recover of the Eastern Building and Loan Association of Syracuse, New York, the penalty provided by the statutes of South Carolina for wrongfully failing to enter in the proper office satisfaction of a mortgage which had been executed by Welling and Bonnoitt to the association.

The controversy presented by the issue joined was whether the mortgage in question secured merely the payment of seventy-eight promissory notes, each maturing monthly, and aggregating $6,065.10, or whether in addition such mortgage secured the payment of the dues and assessments upon certain shares of stock in said association which had been subscribed for by Welling and Bonnoitt. The trial court ruled that the mortgage secured only payment of the notes. A judgment entered in favor of the plaintiff upon the verdict of a jury was subsequently affirmed by the Supreme Court of South Carolina. (34 S. E. Rep. 409.) Thereupon a writ of error was allowed.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the Court.

The Federal questions asserted to be presented by the record are in substance the following:

1. That the Supreme Court of South Carolina, by its decision, refused full faith and credit to public acts of the State of New York;

2. That by such decision the obligation of a contract was impaired; and,

3. That the decision deprived the plaintiff in error of its property without due process of law.

While in various forms, in the trial court, the association in effect claimed that the law of its incorporation formed a part and parcel of the mortgage contract, and that the decisions of the courts of New York respecting the

powers and contracts of associations thus incorporated should be given effect, nowhere does it appear that it was claimed that to refuse to concur in the view stated would operate to deny the protection of the Constitution of the United States. The trial court disposed of the case solely upon what it regarded as the plain import of the terms of the contract, irrespective of the laws of New York and the decisions of the New York courts, yet in the numerous exceptions predicated on the rulings of that court there was not contained, either directly or indirectly, any contention that rights of the association protected by the Constitution of the United States had been invaded. It was not until after the Supreme Court of South Carolina construed the mortgage contract in accord with the claim of the plaintiffs, and that court had hence affirmed the judgment of the trial court and remitted the cause to that court, that, in an application for a rehearing, numerous grounds were set forth in which were contained assertions that the adverse decision of the Supreme Court of the State was in conflict with several clauses of the Constitution of the United States. But this came too late. (*Bobb* v. *Jamison*, 155 U. S. 416; *Winona & St. Paul Land Co.* v. *Minnesota*, 159 U. S. 540, and cases cited.)

The assertion that although no Federal question was raised below, and although the mind of the State court was not directed to the fact that a right protected by the Constitution of the United States was relied upon, nevertheless that it is our duty to look into the record and determine whether the existence of such a claim was not necessarily involved, is demonstrated to be unsound by a concluded line of authority. (*Spies* v. *Illinois*, 123 U. S. 131, 181; *French* v. *Hopkins*, 124 U. S. 524; *Chappell* v. *Bradshaw*, 128 U. S. 132; *Baldwin* v. *Kansas*, 129 U. S. 52; *Leeper* v. *Texas*, 139 U. S. 462; *Oxley Stave Co.* v. *Butler County*, 166 U. S. 648; *Water Power Co.* v. *Street Railway Co.*, 172 U. S. 488.)

The error involved in the argument arises from failing to observe that the particular character of Federal right which is here asserted is embraced within those which the statute requires to be "specially set up or claimed." The confusion of thought involved in the proposition relied upon is very clearly pointed out in the authorities to which we have referred, and especially in the latest case cited, *Water Power Co.* v. *Street Railway Co.*, *supra.*

Dimissed for want of jurisdiction.

True copy.

Test:

Clerk Supreme Court, U. S.